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Ontario

ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 409

DATE: Tuesday, November 10, 1992

BEFORE:

A. KOVEN Chairman

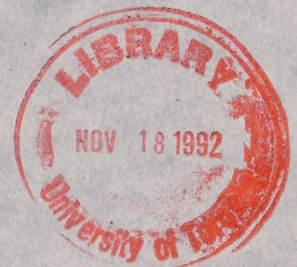
E. MARTEL Member

FOR HEARING UPDATES CALL (COLLECT CALLS ACCEPTED) (416) 963-1249

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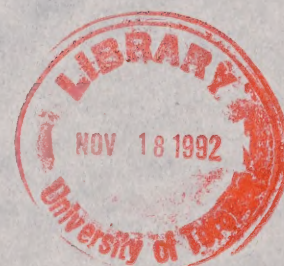
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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of a Notice by The Honourable
Jim Bradley, Minister of the Environment,
requiring the Environmental Assessment
Board to hold a hearing with respect to a
Class Environmental Assessment (No.
NR-AA-30) of an undertaking by the Ministry
of Natural Resources for the activity of
Timber Management on Crown Lands in
Ontario.

Hearing held at the Civic Square,
Council Chambers, 200 Brady Street,
Sudbury, Ontario on Tuesday, November
10, 1992, commencing at 9:00 a.m.

VOLUME 409

BEFORE:

MRS. ANNE KOVEN
MR. ELIE MARTEL

Chairman
Member

A P P E A R A N C E S

MR. V. FREIDIN, Q.C.	)	MINISTRY OF NATURAL
MS. C. BLASTORAH	)	RESOURCES
MS. K. MURPHY)	
MR. B. CAMPBELL)	
MS. J. SEABORN	)	MINISTRY OF ENVIRONMENT
MS. N. GILLESPIE)	
MR. R. TUER, Q.C.	)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN	)	ASSOCIATION and ONTARIO
MS. E. CRONK	)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY	)	ASSOCIATION
MR. D. HUNT)	
MR. R. BERAM		ENVIRONMENTAL ASSESSMENT BOARD
MR. J.E. HANNA	)	ONTARIO FEDERATION
DR. T. QUINNEY	)	OF ANGLERS & HUNTERS
MR. D. O'LEARY		
MR. D. HUNTER	)	NISHNAWBE-ASKI NATION
MR. M. BAEDER	)	and WINDIGO TRIBAL COUNCIL
MS. M. SWENARCHUK	)	FORESTS FOR TOMORROW
MR. R. LINDGREN)	
MR. D. COLBORNE	)	GRAND COUNCIL TREATY #3
MR. G. KAKEWAY)	
MR. J. IRWIN		ONTARIO METIS & ABORIGINAL ASSOCIATION
MS. M. HALL		KIMBERLY-CLARK OF CANADA LIMITED and SPRUCE FALLS POWER & PAPER COMPANY



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APPEARANCES (Cont'd):

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MS. B. LLOYD)	
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MR. D. SCOTT)	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR)	ASSOCIATED CHAMBERS OF COMMERCE
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MR. D. KING		VENTURE TOURISM ASSOCIATION OF ONTARIO
MR. H. GRAHAM		CANADIAN INSTITUTE OF FORESTRY (CENTRAL ONTARIO SECTION)
MR. G.J. KINLIN		DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC		MINISTRY OF NORTHERN DEVELOPMENT & MINES
MR. M. COATES		ONTARIO FORESTRY ASSOCIATION
MR. P. ODORIZZI		BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY

APPEARANCES (Cont'd):

MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON
MR. C. BRUNETTA	NORTHWESTERN ONTARIO TOURISM ASSOCIATION

I N D E X O F P R O C E E D I N G S

<u>Argument:</u>	<u>Page No.</u>
Seaborn)	69751-69795
Gillespie)	69795-69840
Seaborn)	69840-69862

1 ---Upon commencing at 9:00 a.m.

2 MADAM CHAIR: Good morning, Ms. Seaborn.
3 The Board is ready to listen to your argument again.
4 Get started whenever you want.

5 MS. SEABORN: Thank you, Madam Chair, Mr.
6 Martel.

7 ARGUMENT BY MSSES. SEABORN and GILLESPIE (cont'd):

8 MS. SEABORN: I want to return to one
9 matter from yesterday and that is our term and
10 condition 21(c). If you could turn to page 3 of our
11 conditions.

12 As usual Mr. Cassidy picked up on an
13 important matter in respect of this term and condition.
14 Mr. Bax advises me that I managed to, in the second
15 line of 21(c)(i) put in stems, tops. What it should be
16 is stem tops. So if you could cross out the S and the
17 comma I think the condition will reflect our intention.

18 MR. MARTEL: Is that it for today?

19 MS. SEABORN: I wish, Mr. Martel, I wish.

20 Madam Chair, Mr. Martel, where I left off
21 yesterday was topic 6, environmental effects, and I was
22 going to move to address our term and condition 43(e).
23 And this is MOE's proposal in respect of the removal of
24 water crossings on abandoned roads.

25 Now, it's MOE's position that the risk of

1 sediment deposition to waterbodies should be prevented,
2 minimized and mitigated by the removal of water
3 crossings on abandoned roads.

4 The Board will recall that to minimize
5 road construction impacts MNR developed the
6 environmental guidelines for access roads and water
7 crossings, and that's Exhibit 683, and these guidelines
8 are designed to assist in addressing the joint mandate
9 of fish habitat which is MNR's responsibility and water
10 quality which is MOE's responsibility and they're
11 designed to apply during the planning construction,
12 maintenance and abandonment of the road access network.

13 Now, the access road guidelines provide
14 for both physical and natural abandonment and, as the
15 Board will recall, by its very definition when a road
16 is abandoned there is no maintenance. So what we are
17 addressing in this particular condition is the removal
18 of water crossings on those roads that are not
19 regularly maintained.

20 And that's an important distinction
21 because if there's no maintenance then culverts may
22 become blocked or other causes such as beaver dams may
23 lead to washout of a water crossing and, hence, in our
24 view, the environmental effect of sediment deposition.

25 So we are not concerned here about the

1 situation where MNR routinely maintains the road access
2 network, and what that means is that we're not talking
3 about all roads within the area of the undertaking,
4 we're talking about a subset of the roads, those that
5 are abandoned.

6 Now, MNR provided evidence that removal
7 of water crossings is intended to be done on a
8 selective basis with particular emphasis placed on the
9 removal of water crossings which have been an ongoing
10 maintenance problem.

11 Now, in our term and condition you'll see
12 that the wording in 43(e) refers back to MNR's
13 condition 43(d) and in MNR's condition there is a
14 commitment to consider abandoning -- I'm sorry, there's
15 a commitment to consider the removal of water
16 crossings.

17 What hasn't been developed in 43(d) are
18 the criteria for removal of the water crossings and, in
19 effect, which water crossings are going to be removed.
20 What we're asking for then in the condition is for this
21 matter to be addressed by the Board in order to ensure
22 that the commitment that we have from MNR in 43(d) is
23 carried out during the term of the approval.

24 One of the ways that this could be
25 accomplished, in our view, is through an amendment to

1 the access road guidelines because their intent has
2 been set up to deal with construction, maintenance and
3 abandonment of access roads, and we see that as an
4 appropriate mechanism to deal with our concern.

5 Madam Chair, that completes topic 6 on my
6 outline environmental effects. I want to turn now to
7 topic 7 which are silvicultural ground rules.

8 And the two conditions that I'm going to
9 address in this portion of the argument are MOE
10 condition 21(a) and 32(a), and condition 21(a) is on
11 page 3 of MOE's conditions and condition 32(a) is on
12 page 4.

13 Now, condition 21(a) you'll see the word
14 treatment packages is highlighted. That's the only
15 change that we've made from the conditions that we
16 filed with you in February, 1992 in respect of this
17 condition.

18 And condition 32(a) was filed with you
19 during MOE's case as Exhibit 2214, and this is the
20 mapping condition that we came to agreement on with MNR
21 prior to the commencement of MOE's evidence and it was
22 a condition that Mr. Bax spoke to in his testimony.

23 Now, condition 21(a) will have the
24 effect, in our submission, of first ensuring that the
25 logging method is identified at the five-year planning

1 level; and, second, ensuring that prescriptions are put
2 together as integrated silvicultural treatment
3 packages.

4 MADAM CHAIR: Would you repeat that,
5 please?

6 MS. SEABORN: Condition 21(a) will have
7 the effect of, first, ensuring that the logging method
8 is identified at the five-year planning level; and,
9 second, ensuring that prescriptions are put together as
10 integrated silvicultural treatment packages.

11 Now, condition 32(a) will require the
12 mapping of the site types contained in the ground rules
13 so that someone could see a site type on a map and then
14 go to the ground rules to ascertain the preferred
15 combination of harvest, renewal and maintenance, and
16 I'll come to that in a little bit more detail in a
17 moment.

18 Now, both of these conditions are
19 addressed in our written material at pages 82 to 92, so
20 I'm not going to spend too much time on them this
21 morning.

22 The Board will appreciate that MOE has
23 been urging adoption of these conditions or ones with a
24 similar intent almost since the outset of the hearing
25 and certainly since MNR's activities evidence began in

1 Panel 10. So I want to deal first with condition
2 21(a), and I have three submissions for you in respect
3 of this condition.

4 The first submission is that there's
5 overwhelming evidence on the record to support the
6 proposition that the activities of harvest, renewal and
7 maintenance are linked and silvicultural success
8 results from the appropriate integration of the various
9 alternative methods that you approve in respect of the
10 activities.

11 Second, it's our submission that the
12 evidence is clear that the choice of logging method
13 will often dictate the options for renewal and, in our
14 submission, it should be identified at the five-year
15 planning stage.

16 My third submission is that there are
17 very different environmental effects associated with
18 each logging method and these effects must be a factor
19 for the forester to consider when preparing the ground
20 rules. I think the controversy over full-tree harvest
21 is ample evidence for the Board to rely upon that
22 environmental effects are different as between the
23 logging methods.

24 Now, you'll recall, Madam Chair, Mr.
25 Martel, that Mr. Bax defined the silvicultural ground

1 rules in a particular way. He defined the ground rules
2 as bringing together a number of interrelated
3 components including site type, method of harvest,
4 present and proposed working groups, silvical
5 characteristics of the species, logging method, time of
6 harvest, regeneration methods, and standards.

7 Mr. Bax testified that the choice of
8 silvicultural ground rules also reflects economics,
9 wildlife habitat and other considerations, and that
10 evidence is found in Exhibit 2200A, tab 2, page 1.

11 We had a look at the Class EA again. The
12 Class EA at page 15 states that:

13 "The decision on harvest techniques
14 can affect the options available for
15 regeneration and the success of
16 regeneration will determine the
17 requirements for maintenance."

18 The OFIA in its Panel 6 evidence at page
19 26 stated that:

20 "An integrated relationship exists
21 between harvesting, renewal and other
22 timber management activities and no one
23 activity should be viewed in isolation."

24 Now, the Board will recall that
25 throughout the hearing MOE spent a considerable amount

1 of time reviewing existing plans to ascertain the
2 extent to which a common approach was being taken to a
3 development of the ground rules.

4 You will probably recall with some pain
5 the number of times that we took you through Table
6 4.11. We went through a lot of plans, we put the Table
7 4.11 to a number of witnesses, we wanted to understand
8 how the ground rules were formulated. And the results,
9 in our view, were quite telling.

10 To give you some examples, in some cases
11 the method of harvest had no entry; in other cases you
12 looked at a Table 4.11 and you saw the columns
13 clearcut, clearcut for the silvicultural system and for
14 the method of harvest.

15 In the Red Lake plan that you saw during
16 MNR's Panel 15 evidence, all three available harvest
17 methods were listed under method of harvest:
18 full-tree, shortwood or tree-length.

19 We also provided you with examples of
20 some ground rules that were, in our opinion, very
21 informative. In particular, we obtained the ground
22 rules for all of the Industry's case studies. We put
23 those ground rules to Mr. Cassidy's witnesses and we
24 saw differences in approach with respect to those
25 ground rules.

1 It's our submission based on the evidence
2 before you that the forester can do better in preparing
3 their ground rules than they do now. They can predict
4 with a great deal of certainty what package they want
5 to apply for a particular species based on factors such
6 as soil depth and equipment availability.

7 Certainly the introduction of the general
8 standard site type initiative will go a long way to
9 resolving MOE's concern and MOE supports that
10 initiative but, in our opinion, until the logging
11 method is routinely identified and the prescriptions
12 are all identified as silvicultural treatment packages
13 the public's ability to monitor silvicultural successes
14 and failures will be severely limited.

15 MR. MARTEL: Would you repeat that last
16 part?

17 MS. SEABORN: Yes. Until the
18 prescriptions are all identified as silvicultural
19 treatment packages, in our view, the public's ability
20 to monitor silvicultural successes and failures will be
21 severely limited.

22 In our view as well, until the
23 silvicultural treatment packages are identified the
24 professional's ability to monitor silvicultural
25 successes and failures will be severely limited.

1 This matter goes right to the
2 professional forester's ability to report on
3 silvicultural success, which I'll come to a bit later,
4 as well as to the issue of the public being able to
5 understand what is happening in our forest.

6 It's the implementation of silvicultural
7 treatment packages that links the activities and that
8 is why the ground rules must identify these distinct
9 packages.

10 MR. FREIDIN: Sorry, could you repeat
11 that?

12 MS. SEABORN: It's our submission that it
13 is the implementation of a silvicultural treatment
14 package that links the activities and that is why the
15 ground rules must identify distinct packages.

16 And it is for those reasons, Madam Chair,
17 that we are asking you to make the amendments that MOE
18 proposes to condition 21(a).

19 Now, the second matter that I raised in
20 this topic was condition 32(a) -- sorry, Mr. Martel.

21 MR. MARTEL: Can you give me your
22 perspective as to why MNR has been reluctant to accept
23 that, since you've been advocating it as far back as,
24 you say, to Panel 10, and that's been two and a half or
25 three years time since then, and do they give reasons

1 why they are not prepared to accept?

2 MS. SEABORN: As I understand the
3 concern, and no doubt Mr. Freidin will probably address
4 you on this matter in reply, is that when the ground
5 rules are put together they're put together at the
6 five-year planning stage.

7 There were a variety of concerns
8 expressed when we cross-examined the witnesses. One of
9 them was factors such as equipment availability and we
10 may say in our ground rule that we're going to do a
11 particular logging method and then not have the
12 equipment available.

13 On the other hand, we cross-examined at
14 least one witness - and I can't recall the reference at
15 this point - where it was determined that even though
16 in their ground rules they had said they would do
17 full-tree, shortwood or tree-length logging methods,
18 the company only had on hand full-tree harvesters
19 anyway. So, in our view, we didn't understand why they
20 wouldn't agree with us. Frankly we're at a loss on
21 this issue. And I'm not sure that I can give you the
22 answer. We think it's quite straightforward.

23 I think the other answer will become more
24 clear when I deal with my next topic which is
25 effectiveness and our view of how silvicultural

1 effectiveness should be reported on, and we see
2 silvicultural effectiveness being linked to the actual
3 package that is implemented on the ground.

4 At the moment silvicultural effectiveness
5 is reported on based on free to grow assessments, it's
6 not linked to the prescriptions that are actually
7 applied.

8 We think that 21(a) is something that can
9 be done based on the 4.11s we've gone through with the
10 foresters and there were some 4.11s that we found did
11 almost what we were asking for in terms of showing the
12 silvicultural system, showing the method of harvest,
13 showing the renewal treatment. At the beginning of it
14 they gave a site type that was based on FEC unique to
15 that particular unit and you saw proposed working group
16 at the end of it, and that is what we would call an
17 integrated package. So we did see examples of that.

18 MADAM CHAIR: Ms. Seaborn, the Board has
19 heard evidence on this point from foresters and you
20 will recall it, that they always want to have the
21 possibility of choice, they want to identify two or
22 three or four possible methods and they want the
23 ability to pick and choose from those depending on
24 whatever circumstances.

25 Are you preventing that from happening

1 with this version of Table 4.11?

2 MS. SEABORN: No, we're not, Madam Chair.
3 What we're asking for are a series of ground rules for
4 the particular species that are written in the form of
5 a package.

6 The forester can choose among those
7 packages, and you will see that there is also room for
8 exception in terms of exceptions to following the
9 ground rules.

10 MR. FREIDIN: Can I get a citation for
11 that?

12 MS. SEABORN: Term and condition 21(b)
13 where it says:

14 "Where a silvicultural treatment
15 included in the ground rules is not in
16 accordance with the recommendations in
17 the silvicultural guides, you can report
18 those treatments as exceptions to the
19 guides."

20 I'm sorry, Mr. Freidin, I think I said
21 exceptions to the ground rules, I should have said
22 exceptions to the silvicultural guides can be reported.

23 So the forester can put in the ground
24 rules all the options that they want to use for that
25 particular site and they get approval for those ground

1 rules and then they continue on and they apply the
2 appropriate ground rule depending on the site
3 conditions that they're faced with at the time they
4 implement the operation.

5 What happens though on the reporting side
6 is that if you put the package into Table 4.11 and you
7 implement that package in the field, that when you
8 report on later, based on MOE's proposal, as to what
9 actually happened on the ground you can trace the
10 package that was applied back to the ground rule and so
11 you have what we call a feedback loop.

12 Now, condition 32(a), as I indicated, is
13 the matter of mapping the site types. Mr. Bax gave you
14 some evidence in respect of the mapping of
15 prescriptions, and that evidence is found in Exhibit
16 2200A, tab 2, pages 14 to 15.

17 And Mr. Kennedy addressed this particular
18 condition in MNR's evidence in reply, and this is in
19 Volume 385 of the transcript beginning at pages 66484
20 to 66490, and we adopt Mr. Kennedy's submissions in
21 respect of this condition.

22 I would just like to read in Mr. Kennedy,
23 just a couple of paragraphs of his explanation of the
24 purpose of the condition, and this is at page 66484
25 beginning at line 15.

1 "We then took another step and agreed
2 to show preferred silvicultural
3 treatment package for each particular
4 site type. The site type that I'm
5 referring to here is a site description
6 or site type that is shown in the
7 silvicultural ground rules. So if one
8 was to look at a particular piece of
9 geography, look at the type of site
10 conditions that are found one could then
11 go to a silvicultural ground rule, look
12 for that site description that matches
13 the site of interest and follow across
14 and determine what is likely to occur
15 there by way of a preferred silvicultural
16 treatment package that would normally be
17 used on that site.

18 "In our silvicultural ground rule
19 approach though we don't limit the
20 options to that particular approach, we
21 also identify a number of other
22 alternatives which may be used if
23 conditions warrant it and that's with
24 respect to the choices that you can make
25 within your ground rules."

1 So what would be mapped would be the
2 forester's best estimate at the five-year level of what
3 is his preferred package and on the map the coding, I
4 think the evidence was, will be related to the site
5 type in the ground rule so that you don't write out the
6 whole ground rule on a map. That would be in terms of
7 Mr. Bax gave some evidence on using bar charts and we
8 discussed that matter with the Ministry.

9 And even though Mr. Bax gave you that
10 evidence to explain why it was important to map the
11 prescription, we've agreed that just mapping the site
12 type is appropriate because then you can take the site
13 type and then look it up in the ground rules if you
14 want to see what's going to happen, what will probably
15 happen on that piece of geography over the five-year
16 term of the plan.

17 In order to answer concerns raised by MNR
18 foresters and Industry in terms of what happens if they
19 get to the site and the one that they put on the map
20 for the public, the site turns out to be very different
21 and, as I indicated yesterday, you don't go out at the
22 five-year level and gather all sorts of site-specific
23 information based on the current system, so they might
24 get to the site and decide they can't implement the
25 proposed package for whatever reason. There is in the

1 second paragraph of 32(a) a statement that says that:

2 "This mapping will not limit the
3 selection of any other approved
4 alternative silvicultural treatments
5 contained in the ground rules in the
6 event that the actual site conditions
7 encountered are found to be different."

8 So that is where you have some
9 flexibility in the sense of this proposal, but it will
10 give the public a general idea of what's going to
11 happen in a particular area. And, as I said, we adopt
12 Mr. Kennedy's submissions in respect of this proposal.

13 I would like to move now to reporting on
14 silvicultural effectiveness. There are two major areas
15 that I'm going to address in this topic. The first one
16 will be MOE's position in respect of monitoring timber
17 management activities at the management unit level, and
18 the second area will be MOE's specific proposals as
19 they relate to silvicultural effectiveness and, in
20 particular, I'll be addressing why improvements to
21 MNR's current system in respect of reporting on
22 silvicultural effectiveness are required.

23 So the first topic, monitoring timber
24 management activities at the timber management unit
25 level, and there are two submissions I have for you on

1 this matter.

2 The first is that it's MOE's position
3 that the area inspection program, including
4 observations of non-desirable conditions, is a
5 satisfactory mechanism to monitor for compliance
6 effects and effectiveness in respect of the activities
7 of timber management at the local level.

8 My second submission is that it's MOE's
9 position that timber management activities must be
10 monitored not only in respect of compliance but also
11 monitored for effects and effectiveness.

12 MADAM CHAIR: Could you repeat that?

13 MS. SEABORN: That timber management
14 activities must be monitored not only in respect of
15 compliance but also monitored for effects and
16 effectiveness.

17 Now, the first submission I made to you
18 was that the area inspection program is a satisfactory
19 mechanism to use to monitor for compliance effects and
20 effectiveness and we rely on MNR's condition 64(b) in
21 this regard. And that condition, which is quite short,
22 and I'll just read it to you, provides that:

23 "When monitoring timber management
24 activities, MNR shall record any
25 undesirable conditions which are observed

1 in the areas of operations and which
2 appear to be related to timber management
3 activities."

4 So this condition 64(b) is an enhancement
5 of the area inspection program that was described to
6 you by Mr. Carey during MNR's Panel 16 evidence. It's
7 an enhancement in a sense that in MNR's Panel 16
8 evidence Mr. Carey explained that the area inspection
9 program was structured to monitor only for compliance.

10 And what our suggestion was to the
11 witnesses at that time was, if you're going to be going
12 out there and monitoring for compliance, couldn't you
13 at the same time look at effects so that back at the
14 office there would be an opportunity then to do some
15 work on assessing the effectiveness of the activity
16 that you were monitoring.

17 Now, the word effects isn't used in the
18 condition, there seemed to be a particular concern
19 about talking about a local effects monitoring program
20 because it brings into some people a technical
21 definition.

22 Frankly, MOE never intended when we use
23 the words effects and effectiveness to mean that you
24 have to go to a textbook in order to define those
25 words, we always felt they were relatively simple, but

1 in any event we were happy or we were satisfied, I
2 should say, to go with a statement where MNR said that
3 they'll record the undesirable conditions which appear
4 in the mind of the person conducting the area
5 inspection program to be related to timber management
6 activities.

7 And an example would be, I suppose, if
8 someone was out doing an area inspection after a
9 harvest operation and they observed a bunch of eagles
10 nests on the ground it may have been related to timber
11 management and they can make a notation that they
12 noticed that effect of one of the activities. So it's
13 effects tied to the four activities.

14 MADAM CHAIR: Ms. Seaborn, does your
15 client take a position on the proposal by the OFIA that
16 the area inspection process, however constituted, also
17 report on desirable effects and not just undesirable
18 effects?

19 MS. SEABORN: Yes, absolutely. I think
20 we're not categorizing effects, and what we have done
21 is proposed an amendment to MNR condition 64(a). And
22 those two conditions MOE 64(a) and MNR 64(a) are found
23 on pages 10 and 11 of our terms and conditions.

24 Now, if you look first at MNR's condition
25 64(a) you see in the second line that it talks about

1 monitoring the activities for compliance with the
2 approved plans, and then in the second sentence it
3 says:

4 "The area inspection program and other
5 means where appropriate such as contract
6 administration and project supervision
7 will be used to monitor MNR compliance
8 with."

9 And then if you flip over to page 11 to
10 our condition, what we have done is enlarged that
11 provision to include effects and effectiveness. We are
12 not suggesting a new program for MNR to implement in
13 respect of effects and effectiveness monitoring. We
14 are in our submission making 64(a) consistent with what
15 we had understood to be the intent behind 64(b) to do
16 some work in this area of the effects and effectiveness
17 of the four activities.

18 What we want MNR to do is to draw some
19 conclusions from the area inspection reports in respect
20 of effects and effectiveness. The area inspection
21 program is going to document these undesirable
22 conditions but there's no mechanism, in our submission,
23 to analyse that information, and we want the conditions
24 in the approval to make it abundantly clear that
25 carrying out an area inspection report, noting an

1 undesirable or a desirable condition out there, that
2 information should go somewhere. It's all well and
3 fine to have the forester go out and do it, but it's
4 probably not worth gathering if it's going to just sit
5 in a file.

6 Now, it's our submission that MNR's
7 proposal without MOE's amendment will not ensure that
8 there's this reporting in respect of effects and
9 effectiveness and, again, this is tied to the four
10 activities, and that's consistent with MOE's theme that
11 the impacts that we're interested in and that, in our
12 submission, the Board should be concerned about are the
13 impacts of the four activities.

14 Now, if you go to page 139 of our written
15 argument we've taken two quotes from the Class EA and
16 you'll see that the first quote from page 192 of the
17 Class EA is MNR's statement that:

18 "Monitoring forms an integral part of
19 MNR's resource management program and has
20 two components, compliance monitoring and
21 effects/effectiveness monitoring."

22 Then the Class EA goes on to say that:

23 "Effects monitoring is intended to
24 address the short and long-term direct
25 and indirect effects of timber management

1 operations; effectiveness monitoring is
2 intended to assess the effectiveness of
3 timber management prescriptions and
4 practices in terms of achieving the
5 purpose of the undertaking and the
6 prevention, minimization and mitigation
7 of adverse environmental effects."

8 Now, it's our submission that an
9 effective monitoring program is required in order to
10 ensure that the approval meets the requirements of the
11 Act and the commitments that MNR set out in the Class
12 EA.

13 MADAM CHAIR: Excuse me, Ms. Seaborn. On
14 this matter, some of the evidence we have heard from
15 MNR's witnesses has to do with the situation where
16 people who are making observations in the field can
17 only see what is in front of them, they make an
18 observation and it's very difficult for them to - in
19 Mr. Hanna's favourite language - find some kind of
20 cause/effect relationship and, in fact, people in the
21 field may very well infer incorrectly some sort of a
22 relationship.

23 One example of that has been brought to
24 the Board's attention, of course, with the moose liver
25 business where some people in the public felt very much

1 that these moose had been harmed by chemical pesticides
2 and over some period of time the Ministry discovered
3 that maybe there was some parasite or something at
4 work.

5 Do you think the potential for those
6 problems of incorrect assumptions and whatever goes
7 along with that in respect of public alarm or resources
8 being thrown at a problem that doesn't exist, do you
9 feel that that's -- the possible detriments are more
10 than outweighed by the benefits that will occur from
11 simply making these observations and having this kind
12 of a reporting system?

13 MS. SEABORN: I think, Madam Chair, that
14 in this instance it should not be the gathering of
15 information just for the sake of gathering information,
16 which is why we wanted to see it correlated in some
17 way.

18 I think that if we don't have any
19 mechanism to look at effects and then assessing their
20 effectiveness then it will be very difficult to be able
21 to say to the public what is happening on the ground.

22 There has to be something more than just
23 studies or technical reports that are done on a
24 plot-by-plot basis or in a particular area you do a
25 study to assess the effectiveness. In our view there

1 has to be something more comprehensive where we can
2 give the public the indication of what is happening, of
3 what is really happening out there.

4 To put it another way, suppose we had had
5 the benefit say the past 10 years going into this
6 hearing of some information of site-specific effects in
7 respect of the activities, I think that we would be in
8 a different position in the context of this hearing, in
9 a sense they're in a number of areas, we just don't
10 know, we don't have that specific information.

11 So I think my client's position is that
12 the benefits outweigh some of the problems that the
13 witnesses have identified.

14 What you can do through this information
15 is you can determine trends at a local level. You're
16 always going to have a single incident that is going to
17 cause a problem and that's unfortunate, causing a
18 problem in the mind of the public, but you can, on a
19 local level, get some trends from gathering this
20 information and, in our submission, that would be
21 useful to be reported on in the timber management plan.

22 I think the last issue is in terms of
23 cause and effect. We had in our first set of terms and
24 conditions suggested that a local monitoring program be
25 such that MNR establish cause and effect relationships.

1 They expressed concern to us with that proposal, we
2 listened to their concerns and we felt their concerns
3 were legitimate and we have not, therefore, required
4 now the establishment of cause and effect relationships
5 at the local level.

6 I want to turn now to the second topic
7 under No. 8 which is in respect of MOE's proposals as
8 they relate to silvicultural effectiveness. This is a
9 different matter than dealing with the local effects
10 monitoring.

11 MADAM CHAIR: We are on topic 8; are we?

12 MS. SEABORN: We're on topic 8, No. 2 of
13 topic 8. No. 1 was the area inspection program. The
14 second submission I made to you was that what I wanted
15 to address in particular was why improvements are
16 necessary, in our view, to MNR's current system in
17 respect of reporting on silvicultural effectiveness.

18 Now, it's MOE's position that the
19 conditions of approval must stipulate that statements
20 of silvicultural effectiveness be provided at the
21 management unit level including the report of past
22 forest operations, the forest management unit report,
23 the annual report, and at the provincial level in the
24 state of the forest report. And I'll come back to
25 address that in a moment.

1 My second point is that it's our
2 submission that the data is available to MNR now to
3 determine silvicultural effectiveness but analysis is
4 not currently required, nor is the information reported
5 on in the various documents that MNR now produces, and
6 that would include the reports I mentioned previously
7 and the timber management planning manual.

8 My third submission is that while MNR has
9 acknowledged that improvements should be made in the
10 recording and reporting of silvicultural effectiveness,
11 the project that MNR is developing to address the
12 concern will not be fully operational during the term
13 of the agreement.

14 My first submission was that the
15 conditions of approval should require that statements
16 of silvicultural effectiveness be included in the
17 various reports that MNR produces.

18 Now, Mr. Bax addressed this matter in his
19 evidence and that evidence can be found in Volume 372
20 of the transcript. Mr. Bax gave the opinion that it is
21 necessary and essential to have a straightforward way
22 to trace in a timber management plan from what is
23 proposed to what has actually occurred to what has
24 happened.

25 Now, what we did was MOE structured its

1 conditions in such a way that, in our view, a
2 determination can be made as to whether the
3 prescription applied was actually effective.

4 In our submission, timber management
5 activities are carried out on a site-specific basis.
6 In order to evaluate the results produced by these
7 activities forecasting, reporting and monitoring must
8 also be related to site characteristics.

9 Now, MNR's proposing to report
10 silvicultural effectiveness in the report of past
11 forest operations through the free to grow assessment.
12 And Mr. Bax explained that while free to grow will tell
13 you whether you have been effective in respect of
14 renewing a particular working group across the
15 management unit level, it will not tell you which
16 combinations of harvest, renewal and maintenance
17 resulted in the working group reaching free to grow.

18 MADAM CHAIR: Would you like to repeat
19 that last part?

20 MS. SEABORN: Mr. Bax explained that
21 while free to grow will tell you whether you have been
22 effective in respect of renewing a particular working
23 group across the management unit level, it will not
24 tell you which combination of harvest, renewal and
25 maintenance resulted in the working group reaching free

1 to growing.

2 Now, we cross-examined Dr. Osborn on this
3 point in reply and in Volume 390 of the transcript,
4 starting at page 67272 we asked, this is the question
5 at line 24:

6 "But you'll agree with me that since
7 you've defined silvicultural
8 effectiveness as the degree of which the
9 result of an activity achieves the
10 desired objective, you can't assess the
11 effectiveness from reporting areas
12 declared free to grow because you can't
13 tell which management activity produced
14 the free to grow result?"

15 Answer:

16 "That's the way the tables that were
17 alluded to in the timber management
18 planning manual at this point in time
19 read, yes, agreed."

20 Now, MNR gave evidence that reported free
21 to grow results may or may not be a result of the
22 silviculture that was applied to a site. Accordingly,
23 since the performance information contained in the
24 tables cannot be related to the actual activities
25 carried out on the ground, it is impossible to evaluate

1 the effectiveness of any silvicultural treatment in
2 achieving its objectives. And that was evidence given
3 to you by the Ministry in Panel 16 at pages 576 to 77.

4 MR. FREIDIN: Sorry, Panel?

5 MS. SEABORN: MNR, Panel 16, pages 576 to
6 77. It was out of an MNR policy in respect of
7 effectiveness. So this is not something that MOE has
8 thought up.

9 It is for this very reason that was
10 identified to you in Panel 16 that, in our submission,
11 improvement is needed. It's been MOE's position that
12 the Board cannot accept free to grow assessments in
13 their present form as a measure of silvicultural
14 effectiveness. And I'll come to in a moment the
15 specific proposals that we've made in this regard.

16 The general standard site type will go
17 some way in resolving our concern. The site type
18 initiative will be of great assistance in terms of
19 reporting on silvicultural effectiveness, it will be
20 easier to link what you did with the effects and
21 effectiveness.

22 There's six questions that we think
23 monitoring in respect of silvicultural effectiveness
24 should cover. What you should do is, first, you should
25 say what you're going to do, you should indicate where

1 --you're going to do it, you should provide for how
2 you're going to do it, you should document what you
3 actually did, were there any effects and, lastly, were
4 you effective.

5 Now, in respect to the first question,
6 MOE wants the approval to require MNR to stipulate what
7 silvicultural treatment package they're going to
8 implement and that is what is covered by MOE condition
9 21(a) that I referred to in my last section.

10 MOE wants the approval to address where
11 you're going to carry out that prescription and that
12 will be addressed by the general standard site type
13 initiative and the mapping of site types in condition
14 32(a).

15 MOE wants the approval to require MNR to
16 set out how they're going to carry out the activities,
17 and that will be accomplished through MOE condition
18 21(a) as well by including in the package the logging
19 method as well as the silvicultural system and the
20 provisions for maintenance.

21 MOE wants MNR to report on what you
22 actually did, and that is MOE's conditions Appendix 8,
23 1(a)(vii) which I'll come to specifically in a moment.

24 The last two points, or the last two
25 questions, the matters of whether there were any

1 effects and whether you were effective, can be
2 accomplished through MOE condition 64(a) and the
3 reporting proposal that we have made in the various
4 appendices that I'll come to.

5 What MOE is looking for is improved data
6 reporting and an evaluation of that data by the
7 professional forester. Again, in terms of
8 effectiveness we're not talking about a new monitoring
9 program, it's a different way of looking at information
10 that's already available.

11 Now, if you go to page 17 of our terms
12 and conditions we have made some changes here, as you
13 can see by the yellow highlighting, in reported past
14 forest operations from what was provided to you in
15 evidence, and we did two things.

16 The first thing we did was make sure in
17 all the conditions that we had been consistent in using
18 the wording silvicultural treatment package. We had
19 not been consistent in our previous conditions.

20 The second thing that we did was that we
21 made it clear that these matters could be reported on
22 by general standard site type once that initiative was
23 in place.

24 So based on MNR's current system now
25 we're asking for reporting to start as of the date of

1 the approval, if the Board chooses to adopt our
2 conditions of silvicultural effectiveness, and then we
3 put in a provision so that if the Board chooses to
4 adopt the general standard site type initiative, then
5 the reporting and the report of past forest operations
6 would be done using that initiative.

7 Now, in terms of condition 1(a)(vii) of
8 Appendix 8, that's at page 17, in terms of 1(a)(vii) in
9 order to integrate the activities of harvest, renewal
10 and maintenance that MNR now reports on separately,
11 stand listings should be required to show the
12 silvicultural treatment package that was implemented on
13 a specific piece of geography. This is the record of
14 what you did and where you did it.

15 And Mr. Bax, if you go back to MOE's
16 witness statement and his testimony, went through these
17 provisions.

18 The rationale behind 1(b) is to ensure
19 that free to grow assessments be provided by the
20 silvicultural treatment package that was actually
21 implemented. Once that general standard site type
22 initiative is formulated it can be used in conjunction
23 with the silvicultural package. This will, in our
24 opinion, allow the professional forester to determine a
25 true measure of effectiveness associated with free to

1 grow.

2 Now, 1(c), the intent of this provision
3 is to ensure that what is done in terms of monitoring
4 pursuant to condition 64(a) is reported on in the
5 report of past forest operations. So this is a link
6 back to condition 64(a) as proposed by MOE.

7 The Board heard evidence that free to
8 grow is a short-term measure of success. In 1(m) what
9 we're asking for is that a statement of silvicultural
10 effectiveness should be prepared beyond free to grow.

11 If you turn to page 23 of our terms and
12 conditions you'll see that we're also making a proposal
13 in respect of Appendix 18 in (g) and (h).

14 Now, in 1(h) we're recommending that a
15 summary of the monitoring results be provided based on
16 an analysis of available information. This is not new
17 information. We're asking the forester to prepare a
18 report based on the information he has at hand. It may
19 vary from management unit to management unit, which is
20 why we've given a list in 1(h). We're giving them
21 flexibility in the annual report to report on
22 silvicultural effectiveness by looking at the
23 monitoring results at hand.

24 In Appendix 20 which is the annual report
25 on timber management, we're asking for compliance

1 effects and effectiveness to be addressed by looking at
2 all of the annual reports that are prepared for the
3 management units. We think it's important to have a
4 link in terms of your monitoring results between what's
5 reported on at the forest management unit level to the
6 annual report for the area that will cover all
7 management unit levels for the area of the undertaking
8 right up to the five-year state of the forest report.

9 There is a statement at page 25 of our
10 conditions in respect of the state of the forest report
11 where MNR will provide a provincial overview of
12 silvicultural effectiveness. What we're asking for
13 that is different is for them also to look at a summary
14 that's drawn from the data contained in these annual
15 reports and that's the distinction.

16 Now, in MOE's submission one of the
17 critical issues at this hearing has been: What is the
18 state of the forest, what is the state of regeneration,
19 what kind of prescriptions work?

20 When I make that statement I don't want
21 the Board to take that in a negative connotation in the
22 sense that I'm suggesting that the state of
23 regeneration is bad or that prescriptions don't work.
24 What MOE is saying is that until we start to track this
25 information we don't know with certainty, we will never

1 know with complete certainty but in MOE's view there's
2 a happy medium, we can be more certain than we are now
3 because we know we will never be a hundred per cent
4 certain.

5 It's our submission that record-keeping
6 that is consistent and traceable will go a long way to
7 answering those sorts of questions. Certainly the
8 empirical data that has been available to the Board and
9 to MOE on what has happened in the forest has not
10 assisted MOE in answering the question of which
11 combinations of harvest, renewal and maintenance result
12 in satisfactory renewal on particular sites for
13 particular species. We think this is critically
14 important.

15 Mr. Armson told you early in the hearing
16 that information on successes and failures and the
17 reasons for those successes and failures must be
18 available on a consistent basis across the province.
19 He told you that in Panel 4 in Volume 38, page 6323 do
20 to 6326.

21 Mr. Bax spoke a lot in his evidence about
22 the concept of free to grow. You heard a lot of
23 evidence on this matter. It took me a long time to get
24 my mind around free to grow. I expect that when the
25 public goes into an open house or reads MNR's reports

1 or tries to review the report of past forest
2 operations, free to grow probably doesn't mean very
3 much to them. There have to be statements in respect
4 of silvicultural effectiveness, how are we doing out
5 there, the state of regeneration in a way that the
6 public can understand.

7 Now, the second submission that I made to
8 you in respect of reporting on silvicultural
9 effectiveness --

10 MADAM CHAIR: Excuse me, Ms. Seaborn.

11 MS. SEABORN: Yes.

12 MADAM CHAIR: We're trying to follow this
13 very carefully and we'd like a break now before you go
14 on to the second submission. Is that all right with
15 you?

16 All right, we'll be back in 20 minutes.

17 Thank you.

18 ---On recessing at 10:15 a.m.

19 ---On resuming at 10:40 a.m.

20 MADAM CHAIR: Please be seated. Please
21 continue, Ms. Seaborn.

22 MS. SEABORN: Thank you, Madam Chair, Mr.
23 Martel.

24 My second submission in respect of
25 reporting on silvicultural effectiveness was that the

1 data is in fact available to MNR now to report on
2 silvicultural effectiveness. Mr. Bax addressed this
3 matter specifically in his testimony and it was his
4 opinion that a statement of silvicultural effectiveness
5 could be prepared by the unit forester based on his
6 local knowledge, expertise and most importantly, in our
7 submission, project records.

8 At page 150 of our written argument we
9 have included Mr. Bax' testimony in this regard. Mr.
10 Bax testified that:

11 "From my review of plans and from
12 talking to the foresters on the unit
13 most of them have that already, they have
14 a database or a summary of their
15 activities in a way so that they -- they
16 have to know what works where and rather
17 than by individual they're going to group
18 it and say: These particular treatments,
19 be it planting or seeding or whatever,
20 work on these particular sites.

21 "That's basic knowledge he's going to
22 -- either carries in his head or his
23 database or summary data from the SAS
24 records or some of the new initiatives
25 the Ministry is undertaking.

1 "So we're not asking for information, I
2 don't think that isn't available. It's
3 already there, it's just again to put it
4 in a form that there's a linkage so that
5 anybody can trace it."

6 You recall, Madam Chair, in Panel 11, the
7 renewal panel, MNR produced I believe it was in the
8 panel evidence an example of a project record, what it
9 would look like in respect to a silvicultural treatment
10 and these are the sorts of records that evidence was
11 given are kept in a district office with respect to all
12 silvicultural activities that are undertaken.

13 So it's our submission that the
14 information to report on silvicultural effectiveness is
15 there. Where it's not available is in the timber
16 management plan. You cannot go to a plan and find a
17 summary at this time of that information.

18 You can find the free to grow
19 information, you can find assessments based on how well
20 black spruce is doing across the management units as a
21 whole but you can't link that to the ground.

22 Now, the third submission that I gave you
23 is that while MNR has acknowledged that improvements
24 should be made in the reporting and recording of
25 silvicultural effectiveness, the project MNR is

1 developing to address the concern will not be fully
2 operational during the term of the approval.

3 The Board will recall that Dr. Osborn
4 testified in reply on this matter. Dr. Osborn
5 explained MNR's STEMS initiative and and he indicated
6 that it will greatly enhance MNR's ability to report on
7 silvicultural effectiveness, and that evidence is found
8 in Volume 390 of the transcript at page 67271.

9 Dr. Osborn also testified that STEMS
10 would not be operational for some time, possibly not
11 until the year 2005. Dr. Osborn indicated that he
12 could not point to the exact nature of the enhancements
13 to SIS and SAS. He indicated that the linkage of a
14 treatment designation with the result is an item of
15 importance within the SIS enhancement but it's not in
16 place now and no timetable was given in respect to the
17 enhancement of SAS -- of SIS.

18 MNR acknowledges improvements are needed,
19 as I said, and we understand that for a variety of
20 reasons their commitment in this regard is still
21 evolving and has to continue to evolve, but our concern
22 is that the reporting of silvicultural effectiveness is
23 not required now in the context of your approval. When
24 this approval comes up for renewal or extension in nine
25 years' time or five years' time, depending on the

1 ... Board's decision in that regard, we will not be any
2 further ahead, we will still only have the free to grow
3 results and condition surveys to measure success.

4 What we are asking the Board to do is to
5 ensure that something is done on this critical issue
6 during the term of the approval. And I want to
7 emphasize again that our conditions in respect of
8 silvicultural effectiveness revolve around traceability
9 and reporting on information that's available.

10 Madam Chair, that brings me to the
11 conclusion of topic 8. Ms. Gillespie is going to
12 address you on topic 9 in terms of planning
13 considerations, public consultation and bump-up, and
14 then I will address you again on items 10 and 11, which
15 I anticipate will be very brief.

16 MADAM CHAIR: Thank you, Ms. Seaborn.

17 Before we leave topic 8, is it the
18 position of the Ministry of the Environment that the
19 STEMS initiative and any changes, enhancements and
20 whatever is being done to the SIS and SAS program to
21 make it all one approach by MNR, is it MOE's position
22 that even when the STEMS approach is implemented you
23 would still want to see the kind of practical reporting
24 you're asking for in the various annual reports?

25 MS. SEABORN: Based on the information

1 and the evidence that's been provided to you in respect
2 of STEMS, SIS and SAS it's our understanding that when
3 those projects are operational that they will in fact
4 do exactly what MOE is requesting be done now.

5 Our concern is the time that it will take
6 to put those initiatives into place and, as I
7 indicated, that is why we're not suggesting a new
8 program or system to take the place of STEMS and SIS
9 and SAS.

10 We're quite supportive of the Ministry
11 going ahead and developing those systems, and that is
12 why our proposals relate to taking information from the
13 forester's head, from project records and from other
14 available information and putting it in some sort of
15 format that can be reviewed by the professional and the
16 public during the term of this approval, if the Board
17 sees fit to give approval.

18 MADAM CHAIR: The Board would like you to
19 respond to one issue in that context and this is a
20 situation of how a large organization such as MNR can
21 communicate and train its people to do something new,
22 and I'm not suggesting there would be any recalcitrance
23 on the part of MNR staff to learn to do something, but
24 certainly we've had evidence - and some of that has
25 come from your cross-examinations - and people took

1 them a lot of time to come up to speed on the timber
2 management planning manual, it took people a long time
3 to learn about how to apply the interim directions on
4 the moose guidelines.

5 Do you see us getting into a situation
6 where we would have MNR trying to do something along
7 the lines of your proposals and never really catching
8 up with -- having some overlap with STEMS; in other
9 words, working on two trends at the same time, or is it
10 your feeling that the timing of the STEMS is pretty far
11 into the future and that should be the consideration in
12 the timing?

13 MS. SEABORN: It's my understanding that
14 from the evidence would imply that in respect of STEMS
15 they're gathering a group of experts, there's a project
16 team that is working on that initiative. It's not
17 something that the unit foresters are involved in now
18 on a day-to-day basis.

19 So, yes, you're right, there would be a
20 learning curve in the sense of, from our conditions,
21 MNR would have to give direction to the unit foresters
22 or the forest technicians, whoever would be the
23 appropriate people to do this, to have a look at the
24 records that they have and to prepare a statement of
25 silvicultural effectiveness.

1 But I think we feel that this is an
2 important enough area. We would frankly much rather
3 see effort being put into this than training people on
4 how to apply the 2 times 130-hectare interim direction
5 in the moose guidelines. That was never a favorite of
6 ours, as you'll recall.

7 But we think this is an important enough
8 matter that the effort should be put into it and we
9 think that it is important enough in the context of:
10 What is the Minister of the Environment going to say
11 about extending this approval at the end of five years
12 or nine years if we cannot give a better statement in
13 respect of, as I said earlier, what is the state of the
14 forest out there.

15 As I say, I don't want the Board to take
16 a negative connotation from that. I think that we'll
17 just have to see what the information is. It doesn't
18 mean things are necessarily bad and that's not what
19 we're suggesting.

20 I think the last point I'd like to make
21 is that the knowledge and experience based on MNR's
22 testimony from many of its foresters is, in our view,
23 already there.

24 You had foresters such as Mr. Hyunard who
25 gave you evidence, and Mr. Hynard has been on

1 management unit for some years and I think probably Mr.
2 Hynard knew every tree on his unit based on his
3 evidence. He knows a lot about what works and what
4 doesn't work with respect to his particular area.

5 And we think that if you accept the
6 evidence of MNR foresters that they do know their units
7 and they do apply their local knowledge and expertise
8 when they set their ground rules and they do apply
9 their local knowledge and expertise when they apply the
10 various guides in the guidelines, then I think that you
11 should extend that to using their local knowledge and
12 experience to assist them in reporting on effectiveness
13 and what works and what hasn't worked in terms of their
14 prescriptions.

15 Thank you, Madam Chair.

16 MS. GILLESPIE: Madam Chair, Mr. Martel,
17 in this part of our argument I will make submissions
18 with respect to MOE's position on three matters. The
19 first is with respect to area of concern and access
20 planning; the second is public consultation and
21 particularly MOE's proposal regarding optional harvest
22 areas; and the third is with respect to bump-up.

23 With respect to area of concern and
24 access planning, as submitted by Ms. Seaborn yesterday,
25 MOE supports the adoption of the MNR proposal as

1 sufficiently addressing environmental planning
2 concerns.

3 MOE relies on the following five aspects
4 of MNR's proposal in concluding that essential elements
5 are included. The first is condition 16 and Appendix
6 7(a), the mandatory application in timber management
7 planning of various guidelines such as fish habitat,
8 moose habitat, tourism and heritage.

9 The use of resource environmental manuals
10 for direction where values are at risk or featured is
11 also relied on.

12 Condition 34 provides consideration of a
13 reasonable range of practical alternative prescription
14 if no direction is contained in the implementation
15 manual.

16 The third feature is condition 34(c)
17 which provides for exception reporting where the
18 selective prescription differs from the direction in
19 the implementation manual.

20 The fourth is condition 33(b) which
21 provides for area of concern maps which identify
22 prescriptions for public review.

23 The fifth feature is contained in
24 condition 45(a)(c) and 64(a)(i) which provide
25 provisions for the monitoring of operations in areas of

1 concern.

2 We support the MNR proposal as it relates
3 to area of concern planning because it has been
4 substantially streamlined during the class
5 environmental assessment. This streamlining is largely
6 a result of the adoption of terms and conditions making
7 the application of guidelines mandatory.

8 In MOE'S submission the use of guidelines
9 and manuals will substantially reduce the level of
10 documentation required.

11 MADAM CHAIR: Excuse me for a moment, Ms.
12 Gillespie. Mandatory use of three provincial
13 guidelines I think has been established early on in the
14 hearing. Are you saying that there was some recent
15 change in terms and conditions with respect to the
16 mandatory implementation?

17 MS. GILLESPIE: Well, our submission is
18 based on the mandatory use of provincial guidelines and
19 the use of resource management directions where they
20 apply. I don't believe there's been any recent change.

21 But the use of these guidelines and
22 manuals will result in much less documentation, in our
23 view, and you'll no longer see binders of AOC paper as
24 you saw in Panel 15.

25 The application of the guidelines and

1 manuals eliminates, in most cases, the need to set out
2 detailed analysis, the plan need only document the
3 prescription from the guideline.

4 With respect to access planning, as Ms.
5 Seaborn mentioned yesterday, MOE has one remaining -
6 concern, that concern is reflected in MOE's addition to
7 term and condition 40(b). I would just like to read
8 that term and condition to you:

9 "The selection of a corridor from
10 among the alternatives shall be based on
11 a comparison of the evaluations of the
12 alternatives. The reasons for the
13 selection of the corridor and associated
14 use management strategy shall be
15 provided."

16 And the next sentence is what MOE
17 proposes should be added:

18 "Where the preferred use management
19 Strategy will require the restriction of
20 public access, an additional alternative
21 corridor must be evaluated that will not
22 restrict public access."

23 This provision is intended to require
24 that whenever the preferred corridor requires
25 restricted access another corridor without restrictions

1 has to be evaluated. For example, if a corridor
2 requires gating because it will interfere with a
3 tourist operator's business by passing too close to a
4 lake, 40(b) requires the evaluation of at least one
5 different location for a corridor which doesn't go too
6 close to the lake and, therefore, wouldn't need gating.

7 The rationale for this requirement is
8 based on the evidence that you have heard in this
9 hearing that access restrictions produce serious public
10 conflict.

11 There has been a great deal of evidence
12 from the public concerning this conflict which arises
13 between non-timber users such as anglers and campers
14 who want to use the roads once they're there. The
15 conflict arises with other non-timber users such as
16 tourist operators who do not want the public to have
17 that access.

18 The use management strategy will likely
19 require restrictions in that situation where the
20 interests conflict. In MOE's view this is
21 insufficient. The use management strategy does not
22 resolve conflict, it simply pits opposing members of
23 the public against each other; the one group seeking
24 unrestricted use is pitted against the group seeking
25 restrictions. Whatever the result of the use

1 management strategy, one group will be dissatisfied.

2 In addition, you've heard evidence of the
3 cost and effectiveness of enforcement problems which
4 are inherent in restrictions such as gating. In MOE's
5 view the use management strategy is an insufficient
6 method of dealing with this issue.

7 MOE submits that 40(b) will force a more
8 proactive approach to planning in an effort to avoid
9 the conflict arising. 40(b) is a response to MOE's
10 concern that not enough emphasis has been put in MNR's
11 access planning proposals on finding alternatives that
12 don't require gating or other restrictions.

13 Alternatives that don't require
14 restrictions may not be being well found in the current
15 proposals because they cost more or are less desirable
16 routes for some reasons such as cost. 40(b) is
17 intended to put a greater onus on considering a
18 different corridor which will avoid the conflict
19 arising which conflict is inherent in use restrictions.

20 In MOE's view this issue is one of the
21 most significant areas of public controversy and we
22 submit that 40(b) is a reasonable and practical way to
23 ensure that every possible effort is made to prevent
24 this conflict from arising.

25 The Board may recall Ms. Dahl's evidence

1 when she discussed two bump-up situations with respect
2 to road locations. During the bump-up, the
3 consideration of the bump-up request MNR was asked to
4 go back and find more alternatives and that bump-ups -
5 these were the Squaw River and the Tweed bump-ups -
6 both were resolved on the basis that MNR was able to go
7 back and find an alternative and resolve the situation.

8 I have one final submission with respect
9 to OFIA's AOC and access planning proposal. Although
10 OFIA's proposals appear to contain several similar
11 provisions to MNR's, the Industry's proposal, as we
12 understand them, appears to have several aspects which
13 are of concern to MOE

14 The first is that the enhanced planning
15 process may occur too late in the process so that only
16 the person raising the concern will have an opportunity
17 to comment on the solution. This is particularly true
18 with respect to secondary road planning where there are
19 areas of concern.

20 Alternatives are analyzed only after the
21 draft plan stage, which is at the second open house
22 when it is too late for public comment.

23 Another concern is that the rationale for
24 prescriptions is not always transparent, only if the
25 district manager decides are the reasons documented in

1 the enhanced planning process.

2 And the final area of concern is with
3 condition 34. Condition 34 purports to set up reserves
4 if values cannot be protected, but 34(b) permits
5 operations to proceed in any event even if the value
6 cannot be protected if the justification for proceeding
7 is documented.

8 The only limitation appears to be that
9 the justification for proceeding must be documented.
10 There are no restrictions set out on what kind of
11 circumstances would justify proceeding when a value
12 cannot be protected.

13 In MOE's view this provision is
14 unacceptable as it potentially provides unacceptable
15 priority to timber management operations over other
16 values.

17 I want to turn to the second topic which
18 is public consultation. As stated by Ms. Seaborn
19 yesterday, substantial agreement has been reached by
20 the major parties to the hearing reflected in the
21 Illing Report concerning the enhancement of public
22 consultation.

23 MOE submits that the proposals agreed to
24 in the Illing Report substantially enhance the public
25 consultation process in timber management. We rely on

1 five aspects as providing that enhancement.

2 The first is the four-stage formal public
3 consultation process set out in condition 6 to 10.

4 The second is the creation of a local
5 citizens committee to participate as an integral part
6 of the timber management planning process, including
7 provision for one member to sit on the planning team if
8 the committee decides to do so, and that's condition 2,
9 Appendix 1.

10 The third is a planning team with a
11 mandate to make diligent efforts to ensure ongoing
12 public participation throughout the process, and that
13 is found in term and condition 5.

14 The fourth point is the opportunity for
15 the public to arrange for meetings with the planning
16 team and the local citizens committee at any time
17 during the timber management process, and that is found
18 in condition 5.

19 And the fifth enhancement is an option
20 for Native communities to choose additional
21 consultation and documentation opportunities, and that
22 is in condition 6(a), 8(b)(i), 9(b)(i) and Appendix 10.

23 However, it is important to note that no
24 consensus was reached with respect to the information
25 that had to be presented to the public at each stage of

1 the public consultation process.

2 Before turning to the specific Ministry
3 of the Environment proposal with respect to disclosing
4 options for areas of harvest allocations, I would like
5 to summarize briefly why, in MOE's submission,
6 effective public consultation is such a significant
7 issue.

8 Ms. Dahl testified on behalf of the
9 Ministry of the Environment as to the Ministry of
10 Environment's view of public involvement being a key
11 feature of environmental planning. Her evidence was
12 based on the Ministry of Environment experience of
13 environmental assessment review and planning and she
14 testified concerning the Ministry's policies and
15 positions in this hearing and not simply as to her own
16 opinion as an individual planner.

17 Ms. Dahl emphasized the need for a
18 process which facilitates good public involvement as
19 being of special importance in a class environmental
20 assessment where future projects will be planned
21 without the guidance and direct formal input of
22 government agencies for the Minister of the
23 Environment.

24 In her evidence she referred to the
25 Ministry of Environment policy on environmental

1 assessment planning and approvals and the Ministry of
2 the Environment policy and guidelines on presubmission
3 consultation in the EA process. Both those policies
4 are contained in Exhibit 2200B at tabs 9 and 10.

5 Ms. Dahl referred to those two documents
6 to identify three key elements of effective public
7 consultation. The first was that consultation should
8 begin early.

9 The second was that consultation should
10 be proactive, cooperative and consultative.
11 Consultation means that affected parties help to plan
12 the undertaking; consultation should not be a separate
13 process conducted parallel to or subsequent to the
14 planning process.

15 The third point was that planning occurs
16 through a sequence of decisions. In that regard
17 consultation must occur before final decisions are made
18 and in a manner that allows affected parties to
19 contribute intelligently to the sequence of decisions.

20 The Board will recall that in Directions
21 90 MNR embraces the importance of the concept of public
22 participation and has stated that if public input is to
23 be meaningful the people involved must have access to
24 information that is clearly understandable.

25 If people who are to be affected by

1 resource management decisions are to have a say they
2 must be presented with all the options. These must be
3 explained in a coherent, non-technical manner so as to
4 enable people to be active citizen participants rather
5 than passive consumers, and that statement underlies
6 MOE's proposal with respect to public consultation, and
7 it's that statement we're asking MNR to put into
8 effect.

9 Now, at page 107 of our written argument
10 in footnote 159 we have set out a list of evidence
11 mostly from persons who testified at the satellite
12 hearings and some who testified during intervenors'
13 cases.

14 MADAM CHAIR: Excuse me, what was that
15 page number, Ms. Gillespie?

16 MS. GILLESPIE: Page 107, footnote 159.
17 There are about a dozen examples of testimony from
18 members of the public concerning the frustrations
19 inherent in their attempting to participate in the
20 timber management planning process which they found,
21 although it purportedly provided opportunities for
22 comment, was actually often reluctant to release
23 information necessary to comment effectively and
24 permitted only tinkering and fine tuning of decisions
25 which had already been made.

1 MOE also submits that there are benefits
2 to the process of permitting effective public
3 participation. We would like to just summarize those
4 briefly.

5 The first is that an informed public
6 which has participated in decision-making has a better
7 understanding of the basis for decisions and conflicts
8 are reduced or avoided and the number of bump-up
9 requests should diminish.

10 The second is that management decisions
11 are made from a broader information base which should
12 provide for improved resource management.

13 The third is that public input in MOE's
14 submission has the greatest potential for balancing
15 conflicts, particularly with intangible values such as
16 spiritual and aesthetic values. And ultimately the
17 benefit is that the decision-making will more
18 accurately reflect the public's values.

19 It may be helpful to turn to page 111 of
20 the Ministry of the Environment argument where we have
21 set out a chart which shows the four stages of the
22 process and the purpose of each as agreed to in the
23 Illing Report.

24 I think when you look at the chart and
25 you examine the purposes that were agreed to you can

1 see the sequential nature of the planning process and
2 the intention of permitting the public to participate
3 as decisions are refined.

4 The first stage is intended to advise the
5 public of the process beginnings and to provide access
6 to information and to gather information for
7 decision-making.

8 At stage 2, the opportunity for public
9 comment on the assembly and analysis of the background
10 information and evaluation of alternatives occurs, and
11 the purpose is to generate additional alternatives for
12 consideration and to request additional contributions
13 of information to be considered.

14 Now, in MOE's submission that has to
15 occur before decisions are made or it's not a very
16 meaningful exercise and it's at that stage you begin to
17 gather the comment that will permit you to narrow down
18 the range of options, and it's after the public input
19 at stage 2 that selections are made and presented at
20 stage 3, whose purpose is the formal review and comment
21 on proposed operations.

22 In the case of the harvest areas there
23 really isn't any difference between stage 2 and 3, the
24 selected areas are presented at stage 2 and repeated at
25 stage 3.

1 Now, as Ms. Seaborn submitted yesterday,
2 in MOE's submission Section 5(3) of the Act requires
3 that alternatives must be evaluated with respect to all
4 four activities including harvest because it is the
5 activities which impact on the environment. It is
6 further the submission of the Ministry of the
7 Environment that the evaluation of the alternatives
8 must be documented and presented to the public for
9 their input prior to decisions being made.

10 I would like to refer the Board to the
11 timber management planning manual at page 8. Page 8 is
12 part of Chapter 2 which is entitled Plan Production and
13 Review.

14 MADAM CHAIR: Ms. Gillespie, can you hold
15 on a moment.

16 MS. GILLESPIE: Actually I would like you
17 to look at it, if you have it. And the Board will
18 recall, while you're getting this, that this section
19 outlines the process involved in the production of a
20 timber management plan.

21 MR. MARTEL: What page?

22 MS. GILLESPIE: Page 8, and this section
23 is entitled Determination of Management Objectives, and
24 I'd just like to read the first sentence which says
25 that:

1 "Timber management planning requires
2 the consideration of and ultimate
3 selection from among a number of
4 alternate methods for the provision of
5 access, the harvest of the forest
6 resource and the subsequent renewal and
7 maintenance of the forest reserve."

8 Now, skipping down to the middle:

9 "As management alternatives are
10 developed the planning team should
11 attempt to identify any problems or
12 issues which might arise should any
13 alternative be implemented. There may
14 also be opportunities afforded by some
15 alternatives to integrate operations or
16 achieve other efficiencies. These
17 operations should be identified as well.

18 "For a large part of the planning
19 exercise the consideration of
20 alternatives will go unrecorded, only the
21 final decision of which factor will be
22 used or which course of action taken will
23 be documented in the plan."

24 In MOE's submission the consideration of
25 alternatives for harvest areas is one of the unrecorded

1 analyses that is referred to on page 8. It is our
2 position that this weighing of alternatives is taking
3 place and we want it recorded, documented and presented
4 to the public.

5 MR. MARTEL: I'd like to ask a question
6 because that's pretty specific. It says only the final
7 decision of which factors will be used or which course
8 of action will be documented in the plan. So that's
9 the final plan, I presume, and does that leave in your
10 opinion any room for considering options prior to the
11 final plan being presented to the public?

12 MS. GILLESPIE: Mr. Martel, the point
13 that we are making by quoting this is that there are
14 many decisions made and many alternatives considered
15 during timber management planning that go unrecorded.
16 It doesn't mean that the consideration of alternatives
17 isn't taking place.

18 In MOE's submission consideration of
19 alternative areas for harvest is happening in timber
20 management planning when the planners decide which
21 areas will be selected. That consideration of
22 alternatives is now going unrecorded and is not
23 available for public comment.

24 MOE's proposal is that this consideration
25 be recorded and documented and be presented to the

1 public before the final decision is made, before the
2 selection of areas occurs.

3 In MOE's submission we're not asking for
4 a new alternative analysis, we're asking them to record
5 one that is currently being done.

6 Mr. Bax also gave evidence that
7 alternative harvest areas are currently considered in
8 the selection process and that evidence is found at
9 Volume 376 at page 65396 to 97. It's Volume 376, page
10 65396 to 97. It's not very long, I think I will just
11 read it to you.

12 "I think what's missing is that these
13 types of options or alternative is
14 already done. They don't go in and just
15 simply select this and say this is where
16 we're going to harvest, they look at the
17 stands, they look at the areas, they come
18 from the 20-year, narrow it down to the
19 five-year. So this kind of options that
20 they look at is done, including
21 alternatives to the roads and including
22 alternatives to the alternative areas,
23 because they have to weigh what is most
24 economical, does it meet the eligibility
25 criteria, is there sufficient volume in

1 the working groups that meet the MAD
2 criteria.

3 "So I think what our client is asking
4 for, the Minister of the Environment, is
5 just a simple explanation to the public
6 so they can determine, yes, they didn't
7 select this particular area for no
8 particular reason, they looked at some
9 alternatives, like this is the one and
10 this is the reason for it.

11 "Again, I think the thrust behind it is
12 just a well informed public who better
13 understand why on earth did you just pick
14 just that one area."

15 If I can refer you to our proposed
16 amendments to Appendix 4 and point out that it has been
17 simplified since MOE's evidence was presented in order
18 to attempt to address the concerns raised by MNR in
19 reply. Appendix 4, Section 2(vi) now reads:

20 "Selection criteria for harvest,
21 renewal and tending operations during the
22 five-year term and an evaluation of a
23 reasonable number of practical
24 alternative areas for harvest and, at the
25 discretion of the plan author, the

1 preferred alternative."

2 MOE revised the language to express that
3 a reasonable number of practical alternatives for
4 harvest needs to be evaluated because the language,
5 reasonable number of practical alternatives, is the
6 language agreed to by MNR with respect to alternatives
7 analysis in AOC planning and access planning. If you
8 look at term and condition 34 and 35, that's the sort
9 of language that they find acceptable.

10 As stated by Ms. Seaborn yesterday, the
11 decisions of if, where, when and how timber management
12 will take place at the local level are key decisions in
13 the timber management planning process.

14 ---Discussion off the record.

15 MS. GILLESPIE: Okay. Getting back to
16 Ms. Seaborn's submissions from yesterday, about if,
17 where, when and how are the key decisions in the timber
18 management planning process, it is MOE's submission
19 that absent our proposal to require the presentation of
20 an evaluation of optional harvest areas for comment
21 prior to the selection of the areas being made, the
22 public will have no input into the decisions of if,
23 where or when harvest occurs except in a reactive
24 context of AOC mitigation planning.

25 The public will continue to be frustrated

1 with only being able to tinker and fine tune the
2 decisions that have already been made. This concern
3 was underscored in our submission by the evidence of
4 Mr. Kennedy in Reply Panel 1 where he described the
5 process during public consultation as "fine tuning".

6 The public is presented with selected
7 areas at the first open house in stage 2 and they are
8 basically repeated at stage 3 of the consultation.

9 In MOE's submission, the two open houses
10 are essentially redundant unless an evaluation of
11 alternatives is presented to the public at the first,
12 the public comments on the alternatives and the
13 selection is made between the two open houses and the
14 decision is presented for review at the second open
15 house in the draft plan.

16 That's the framework that was agreed to,
17 that's the framework that is necessary for an effective
18 public consultation process. In our view, that is not
19 going to happen without the alternatives for harvest
20 areas being presented before they are selected.

21 I would just like to respond directly to
22 the objections raised by MNR to this proposal. Now, I
23 counted five, I'm sure there will be more by tomorrow.

24 The first is - in no particular order -
25 that this proposal does not sufficiently recognize the

1 role of the local citizens committee. I have two
2 points in response to that objection.

3 The first is that the local citizens
4 committee does not replace the need for general public
5 consultation and participation, and I think that's a
6 point that MNR agrees to. The LCC can never represent
7 all members of the public and it has limited capacity
8 and resources to do so.

9 The second is that the LCC is not going
10 to see the evaluation of alternative harvest areas in
11 any event under the current proposal. This analysis is
12 not recorded or disclosed to the local citizens
13 committee any more than it is to the general public.

14 Mr. Kennedy --

15 MADAM CHAIR: Excuse me, Ms. Gillespie.
16 Mr. Martel and I have spent some time trying to sort
17 out in our own minds what would be the most effective
18 role of the LCC, and keeping in mind as well the OFIA's
19 proposal for very early involvement of the LCC and an
20 ongoing involvement, they don't begin and end their
21 work in some period of time, it's an ongoing sort of
22 creation and, as well, they have responsibility to also
23 do their own consultation with the public and their
24 membership on the planning team.

25 So we really don't see how they won't be

1 involved or have access to or demand to know what the
2 options are for harvest.

3 And that doesn't address the point you
4 just made about the general public seeing something,
5 but with respect to the LCC, we think they're going to
6 assert themselves as it's set up to get whatever
7 information they want on whatever subjects.

8 MS. GILLESPIE: Well, Mr. Kennedy was
9 asked that question in reply evidence and at Volume 387
10 page 66604 to 05, as I understood his evidence, there
11 wasn't any intention to present or discuss with the
12 local citizens committee alternatives analysis of
13 harvest areas.

14 MR. MARTEL: But there is a member of the
15 planning team to come directly from the local citizens
16 committee and I presume the planning team will have the
17 documentation which led to, or the matters that were
18 considered for option by the planning team itself.

19 MS. GILLESPIE: Well, Mr. Martel, the
20 membership on the planning committee is optional, we
21 don't know whether that will actually happen. The
22 other point is that this analysis is not documented in
23 the current process, it's something that, as far as we
24 understand, it happens informally.

25 It may be that someone from the local

1 citizens committee will demand that this exercise will
2 be documented and shown to them, but you have no
3 guarantee that will happen. And, as Madam Chair
4 pointed out, it doesn't address the broader issue of
5 the public generally being involved and presented with
6 this.

7 The second area of objection is that the
8 proposal is impractical and requires unreasonable extra
9 planning effort. And this objection, as I understand
10 it, breaks into two points. One is that an additional
11 open house may be required. That's the first one.

12 It is MOE's submission that the
13 consideration of options is not a clearly sequential
14 process, that although in order to make the terms and
15 conditions readable they may sometimes appear to be
16 discrete and sequential, but the actual process is
17 interrelated.

18 It is MOE's submission that alternatives
19 will be developed which include components of both area
20 and access and that those considerations are not
21 distinct and sequential, and a second open house would
22 not be required -- sorry, a third open house.

23 The second part of this argument is that
24 MNR objects on the basis that it will not be practical
25 for them to consider alternative areas because of the

1 extra planning effort.

2 The first point we want to make about
3 this is that MOE submits that MNR is in fact already
4 doing this extra planning for contingency areas, so
5 they're already doing what they say they can't do for
6 our proposal.

7 Condition 31 provides that 20 per cent
8 contingency areas must be available and mapped
9 separately on the areas selected for operations map.

10 The Class EA Document states at page 144
11 that the planning of access roads and harvest, renewal
12 and tending operations for a contingency area must be
13 completed in the preparation of the timber management
14 plan. MOE submits that one possible way of dealing
15 with this issue at the very least is that MNR can wait
16 to designate which area is the contingency area until
17 after the first open house and public input into the
18 selection. At the very least one alternative area
19 already exists in all timber management plans without
20 any additional effort at all.

21 MNR also objects to the additional effort
22 required because of increased values planning and, in
23 that regard, MOE submits that values are already
24 identified on eligibility maps for the entire area not
25 just the areas selected for operations.

1 We would submit that the streamlined area
2 of concern process that we already referred to would
3 require little documentation in that regard.

4 I would also like to point out that the
5 Minister of the Environment has intentionally left the
6 level of detail for this analysis to the discretion of
7 the MNR.

8 Now, it was Ms. Dahl's evidence that a
9 general level of analysis was sufficient at this early
10 stage of the proceedings. Now, MNR has attempted to
11 discredit Ms. Dahl's evidence on the basis of
12 inexperience.

13 We submit that Ms. Dahl's evidence is the
14 best evidence of environmental assessment and planning
15 requirements that the Board has before it. In our
16 submission, environmental assessment planning and
17 timber management planning are two very different
18 concepts. In fact, the timber management planning
19 manual preface records the necessity for the timber
20 management planning manual to change to be consistent
21 with environmental assessment.

22 This is an environmental assessment and
23 the planning process which results must be consistent
24 with environmental assessment requirements even if it's
25 going to be more work.

1 When Ms. Dahl gave evidence of the
2 Ministry of the Environment's position and was
3 explaining environmental assessment planning
4 requirements, not timber management planning, we submit
5 that her evidence was straightforward, credible and
6 persuasive.

7 Her five years of experience with
8 environmental assessment matters is broadly based and
9 includes the application of environmental assessment
10 planning and policy principles to many kinds of
11 undertakings. It's recent experience, she has the most
12 up-to-date experience of any witness with respect to
13 EA.

14 In contrast, Mr. Bisschop has spent the
15 last 10 years involved in timber management planning.
16 I would also remind the Board of the evidence given by
17 Ms. Suzanne Dube-Veilleux that's set out at page 74 of
18 our written argument behind tab 2, and you don't need
19 to turn to it.

20 She testified that:

21 "The current timber management
22 planning process and that proposed by the
23 Ministry of Natural Resources is
24 essentially an accept or reject
25 proposition with the exception of some

1 aspects of access planning and some area
2 of concern prescriptions.

3 "In essence, for the public to refute
4 this type of response, they would need to
5 prepare their own plan which is obviously
6 a monumental task for a lay person
7 without the resources and information
8 available to the planning team and the
9 plan author."

10 Now, it's our submission that the onus
11 should be on the MNR to do the work required to permit
12 appropriate public consideration of alternatives to the
13 four activities.

14 A third objection that was raised was
15 that if the purpose of this proposal is to resolve
16 conflict there are other methods to do so.

17 Now, in response to that objection MOE
18 repeats that the purpose of this proposal is to involve
19 the public in decision-making into the key issues of
20 if, where and when. The purpose is to produce a more
21 effective partnership with the public and to produce
22 better decision-making in accordance with the
23 principles reflected in Directions 90. The purpose is
24 to have a proactive process rather than one that reacts
25 to conflict. One of the benefits should be reduced

1 conflict but that's not the purpose.

2 The fourth objection raised was the
3 public is not interested in a scheduling decision. In
4 MOE's submission this assertion defies the tenor of
5 much of the evidence from members of the public in this
6 hearing. The evidence is clear that the public is very
7 interested in if, where and when harvest occurs. Even
8 if you view this as a scheduling issue, over a 20-year
9 horizon scheduling can have very different impacts and
10 be of extreme interest to those affected.

11 If no one has asked for alternative areas
12 in Mr. Kennedy's experience it may simply be an
13 illustration of the current process directing people to
14 fine tuning exercises.

15 The last objection is that MOE's proposal
16 amounts to an improper recreation of the land use
17 decision contained in the DLUGS. MOE submits that the
18 presentation of alternative areas for harvest to the
19 public for comment prior to selection is in no way a
20 recreation of the land use decision.

21 The first reason that we say that is that
22 the proposal simply involves the public in a decision
23 that is already being undertaken in the timber
24 management process; that is, the selection amongst the
25 eligible areas of where to operate in the succeeding

1 five years. It's difficult to see how that in any way
2 impacts on a decision in the DLUGS.

3 The second point is that forestry is only
4 one of a number of permitted uses. The DLUGS cannot
5 mandate any particular use occurring in any particular
6 geographic area at any given time, they simply set out
7 permitted uses. In any event, a use permitted by a
8 DLUG is subject to other appropriate planning exercises
9 and approvals before it can be carried out.

10 With respect to forestry, planning
11 decisions necessary to determine whether the permitted
12 use will actually occur are deferred to the timber
13 management process and that includes consideration of
14 the environmental effects. The DLUGS have not been the
15 subject of environmental assessment.

16 If the Board does not require the
17 Ministry of Natural Resources to document its analysis
18 of alternative areas for harvest, that activity will
19 not have been planned in accordance with the
20 requirements of Section 5(3) of the EA Act and the
21 public will not be involved in the decision of if,
22 where and when harvest occurs.

23 The DLUGS are guidelines only and were
24 not meant to be binding land use decisions and do not
25 even exist throughout the entire undertaking.

1 I'd just like to refer you to the
2 evidence of Mr. Monzon who testified on behalf of MNR
3 early in the hearing as to the purpose and effect of
4 the DLUGS, and that's set out in our page 119 of our
5 argument.

6 "DLUGS and SLUPS were not meant to be
7 the ultimate in terms of how resource
8 management would take place on the land
9 and water base of the province. They
10 were meant to be guidelines, they were
11 meant to provide direction but were not
12 meant to be the document that would be
13 enshrined in stone and nothing else need
14 happen."

15 I would refer you again to the comments
16 that the Minister of the Natural Resources made before
17 the Royal Commission, that:

18 "Both these land use plans are simply
19 viewed as guidelines which have no direct
20 legal effect on the resources of the
21 province and specific end uses or
22 delineating where these resource
23 development conservation activities can
24 or cannot be carried out."

25 In summary, it is submitted that the

1 existence of DLUGS cannot be held up as a block to
2 considerations which are the requirements of good
3 environmental planning and the Environmental Assessment
4 Act.

5 Timber management planners may have
6 considered themselves bound by DLUGS in the MNR
7 hierarchy of the planning but your view of what the
8 environmental assessment requires cannot be and ought
9 not to be constrained by DLUGS.

10 I would like to move on to a brief
11 comment with respect to the OFAH/NOTOA Coalition
12 submissions and simply point out that MOE completely
13 disagrees with Mr. Hanna's characterization of our
14 proposal as extreme.

15 MOE's proposal is to require alternatives
16 analysis of all four activities and only the four
17 activities. It is reasonable, practical and necessary
18 and will not grind timber management to a halt.

19 With respect to harvest, our proposal
20 requires MNR to record and present to the public
21 alternatives it is already considering in the process.
22 OFAH's proposal requires a detailed level of analysis
23 of activities at every step and decision in the
24 process. In our submission, OFAH's term and condition
25 28 alone is far more onerous than MOE's proposal.

1 Now, Ministry of Natural Resources.

2 MNR has revised term and condition 28 in its final
3 draft terms and conditions, apparently in response to
4 our proposal that alternative areas for harvest be
5 presented to the public at stage 2, and they have added
6 a requirement for an explanation of how the application
7 of the selection criteria resulted in the areas
8 selected for harvest, renewal and tending operations.

9 MOE views this addition as inadequate to
10 address our concerns because the public is still not
11 presented with alternative areas. The public does not
12 have the technical ability to generate its own
13 alternative areas through application of the selection
14 criteria.

15 It is not simply a question of trying to
16 understand how a selection criteria were applied, it is
17 a question of participating in the selection. Most of
18 the public do not know how to read an FRI map.

19 In our view, MNR's proposal requires an
20 interested member of the public to stand in front of an
21 eligibility map and mentally apply selection criteria
22 in order to generate alternative areas for
23 consideration.

24 It is submitted that only a professional
25 forester has the knowledge and expertise to tinker with

1 the selection criteria in an effort to influence the
2 selection of areas for operations.

3 In our submission, the ability to input
4 on preferred areas of harvest should not require
5 technical knowledge of forestry principles or
6 requirements.

7 It is our submission, in conclusion, that
8 the consideration of alternative areas exists in timber
9 management planning and currently goes unrecorded and
10 undisclosed.

11 MNR's revision does not address our
12 requirement to document the evaluation of alternative
13 areas for harvest and to present them to the public for
14 comment and participation in the decision-making
15 concerning one of the four activities.

16 If you continue to have a concern with
17 the particular wording of this proposal or how it fits
18 into other aspects of MNR's proposal, we submit that
19 the matter should be addressed as an issue in your
20 decision and it should be ensured, in whatever way you
21 consider appropriate, that the public be involved in
22 the evaluation and selection of areas to be harvested.

23 Madam Chair, I was now going to move into
24 another area. It may be a good time to break for
25 lunch.

1 MADAM CHAIR: Yes, it is a good time to
2 break for lunch, Ms. Gillespie, but Mr. Martel and I
3 are interested, when we return from lunch, we would
4 like to hear from you or Ms. Seaborn or both of you, we
5 would like you to put your client's position very
6 clearly in front of the Board on the district land use
7 guidelines status with respect to the Board's
8 consideration in its decision.

9 You've been here to listen to all the
10 evidence and you know the views of the intervenors who
11 feel that the Board should be fairly aggressive in
12 considering land use and you have the views of the
13 Ministry of Natural Resources which sees land use
14 planning as something quite separate from timber
15 management planning.

16 Mr. Martel and I would like to hear from
17 the Ministry of the Environment, and certainly you've
18 discussed it and I would like you to go over the points
19 you made with respect to the harvest option situation,
20 but also pull together where you've discussed the DLUGS
21 elsewhere in your written argument.

22 Thank you.

23 ---Luncheon recess at 12:00 p.m.

24 ---On resuming at 1:30 p.m.

25 MADAM CHAIR: Good afternoon, Ms.

1 Gillespie. Are we ready to continue?

2 MS. GILLESPIE: Yes, thank you, Madam
3 Chair.

4 I would like to begin by responding to
5 Madam Chair's question just before the break with
6 respect to MOE's position on DLUGs.

7 I would just like to repeat that in MOE's
8 submission DLUGs are MNR policy guidelines. They fit
9 into the MNR hierarchy of planning decisions but they
10 are policy guidelines, and I will refer you to page 103
11 of the Class EA document which describes the effect of
12 the guidelines in the same general terms as we
13 described this morning. I just wanted to give you that
14 reference.

15 Now, since DLUGs are government policy,
16 you heard our submissions yesterday that you have
17 jurisdiction to change or effect government policy, but
18 nothing compels you to do that in this process. It is
19 MOE's view that you can simply ignore DLUGs in your
20 decision.

21 As a practical point, it would be of no
22 utility to amend DLUGs because they have no legal
23 effect anyway.

24 If you are persuaded to require terms and
25 conditions that MNR argues are inconsistent with the

1 DLUGs, MNR will have to amend the DLUGs. MNR cannot
2 use policy guidelines as a shield to your environmental
3 assessment decisions.

4 The same reasoning applies to our
5 proposal with respect to alternative areas. In our
6 view MNR should not be permitted to use the DLUGs as a
7 shield from EA requirements and they should be ignored.

8 I would like to move on to a few brief
9 submissions on bump-up. Our written argument in
10 support of the bump-up proposal is found at page 122
11 through 130. We don't propose to take you through that
12 argument which explains the procedure and rationale for
13 it.

14 MNR has addressed in its final revisions
15 the one remaining concern that MOE had with respect to
16 the timing of the minister's decision and MOE no longer
17 requires any amendment to the bump-up process.

18 I just have a few comments with respect
19 to other parties' positions. With respect to OFAH, we
20 note that OFAH has revised its proposal and no longer
21 requires automatic appeal resulting in Board hearings.

22 However, OFAH is proposing, as we
23 understand it, that the preparation of an individual EA
24 document is unnecessary and that if bump-up is granted
25 the Proponent would simply use this timber management

1 plan.

2 MOE disagrees with this as a general
3 requirement. If it is appropriate in a particular
4 case, the minister has the discretion to provide the
5 sort of exemptions OFAH requests.

6 However, in most cases bump-up requests
7 will be with respect to only part of a timber
8 management plan. Typically a specific area or road or
9 a single issue or activity may be the subject of a
10 request. In those cases it is necessary to prepare a
11 new individual environmental assessment to address the
12 particular more limited concerns raised in the bump-up.

13 With respect to the OFIA proposal, as we
14 understand it, the minister cannot make a decision on a
15 bump-up request if the request is made during plan
16 preparation.

17 In our view the minister should be able
18 to make a decision during the process if it is
19 appropriate to do so. In many circumstances the
20 minister may send requesters back to follow through
21 with the planning process if it has not been exhausted.

22 However, in some circumstances, such as a
23 clearly vexatious request or a very immediately
24 significant one, in our view the minister should be
25 able to reject or accept the bump-up regardless of the

1 stage of the process in which it occurs.

2 FFT argues for the imposition of
3 mandatory criteria to trigger bump-up decisions. In
4 his submission, as I understood them, Mr. Lindgren
5 suggested that there are no guidelines or criteria
6 currently in place.

7 He was incorrect in that submission, and
8 I wish to remind the Board of Ms. Dahl's evidence.
9 Although in the past there was no procedure, there are
10 now interim guidelines and criteria prepared and in use
11 and they are contained in Exhibit 2200B, Tab 11 at
12 pages 2 to 4.

13 Just briefly, the criteria the minister
14 applies are five in number. The first is the extent to
15 which a proponent has complied with the planning
16 process established in the Class EA.

17 The second is an examination of the
18 overall benefit of bump-up in the case. Can an
19 individual EA assist the problem?

20 The third is a consideration of the
21 public concern and the consultation process.

22 The fourth is a review and assessment of
23 the effects, are there significant adverse
24 environmental effects raised beyond the intended
25 application of the Class EA.

1 The fifth is the availability and
2 adequacy of other legislation or approvals which might
3 deal with the concern.

4 It is submitted that the Ministry of the
5 Environment does have criteria in place which are
6 appropriate to assist the minister in making her
7 decision.

8 Mr. Lindgren also submitted that other
9 Class EAs contain bump-up criteria which are used to
10 identify situations where an individual EA is
11 appropriate.

12 We would like to point out to the Board
13 that if you review the other Class EAs there is general
14 discussion of situations where a bump-up may be
15 requested or may be appropriate. We can find no
16 mandatory criteria which the minister must use to
17 determine whether to grant a bump-up request.

18 In our submission the FFT proposal for
19 mandatory criteria would dictate what the decision will
20 be if the criteria is met regardless of other
21 considerations. This, in our view, is an inappropriate
22 removal of the minister's discretion to decide. The
23 minister takes many things into consideration depending
24 on circumstances. The FFT proposal would restrict that
25 process and dictate the result to the minister.

1 The two situations which FFT set out as
2 indicating mandatory bump-up are if the proposed
3 activity will cause or is likely to cause significant
4 environmental impacts or, (b), if there are unresolved
5 public concerns.

6 It should be noted that these criteria
7 are very broad and could be fulfilled in almost every
8 circumstance in which the minister receives a bump-up
9 request. These criteria are reflected within the
10 ministry's current guidelines and will be considered by
11 the minister, but should not bind her final decision.

12 The minister should be entitled to
13 consider other circumstances in each case, such as
14 whether the individual EA can benefit the situation in
15 the circumstances and whether the process has been
16 appropriately applied and achieved a reasonable result.

17 We submit as a general proposition that
18 the Board should reject proposals which result in
19 automatic bump-up under any circumstances.

20 In MOE's view, automatic bump-up focuses
21 the public on a right of appeal at the end of the
22 planning process rather than encouraging them to
23 participate in and resolve concerns early in the
24 process. It may permit parties to use bump-up as a
25 bargaining chip during the process.

1 It is MOE's position that the purpose of
2 bump-up is to provide a method of addressing and
3 investigating environmental impacts not foreseen in the
4 Class EA approval as a safeguard for unforeseen local
5 circumstances. Bump-up is not intended to be a dispute
6 resolution mechanism.

7 In MOE's view, the better the Class EA
8 process works, including this issue resolution process,
9 the less bump-up will be necessary.

10 I have one remaining submission to make
11 to you which is just a general one concerning the use
12 of expert evidence. You have heard much in the
13 arguments of various parties concerning the numbers and
14 expertise of various witnesses that have testified
15 before you. A lot of that argument focused on
16 competing credentials and numbers. There seems to be
17 some debate as to who has more experts or who has more
18 experts experts.

19 Just in that regard I wanted to refer you
20 to a Supreme Court of Canada decision which is cited as
21 Shawinigan versus Naud than it is a 1929 decision, but
22 it has been referred to by a joint board in the Halton
23 landfill case and all I want to refer you to is the
24 headnote to the case, and I will read it as a general
25 principle. It states that:

1 "In the trial of an action the law
2 makes no distinction between professional
3 and other witnesses, and the evidence of
4 medical men must not be accepted as
5 Conclusive merely because a majority of
6 them agree, for the Court is bound to
7 examine, appreciate and weigh the
8 evidence of each doctor as any other
9 testimony given in the case, and to reach
10 a conclusion based upon all of evidence,
11 facts and circumstances presented for
12 consideration."

13 I just brought that to your attention
14 because we urge you to assess the evidence that you
15 have heard and weigh it from a common-sense point of
16 view with your own judgment.

17 The witnesses were all qualified to
18 testify and we urge you to concentrate on the substance
19 of their evidence rather than on a over their
20 credentials.

21 The EA legislation and hearing process is
22 not intended to create a regime only scientists can
23 participate in and understand.

24 That concludes my submissions.

25 MR. FREIDIN: Could I have the citation

1 for that, please?

2 MS. GILLESPIE: Yes, will give you a
3 copy.

4 MADAM CHAIR: This has to do with to what
5 extent the Board is really considering bump-up and what
6 its authority to do so is and Ms. Seaborn touched on it
7 yesterday as well.

8 Bump-up is part of the Environmental
9 Assessment Act. What sort of authority does the Board
10 have to change aspects of bump-up beyond the sorts of
11 process issues relating to bump-up that we have before
12 us?

13 MS. GILLESPIE: Madam Chair, the
14 requirement for a bump-up provision is not linked to
15 any requirement in the legislation.

16 It is grown from the class environmental
17 process in order to deal with the fact that all of the
18 specific local information is not available at the
19 class level and may have to be individually assessed in
20 the future. The jurisdiction for the Board to impose a
21 bump-up regime is the same as imposing other terms and
22 conditions.

23 MADAM CHAIR: With respect to an issue
24 that Ms. Seaborn touched on yesterday, and that had to
25 do with one of her views of the situation where

1 bump-ups would arise in the future and it might have to
2 do with circumstances that wouldn't be foreseen in the
3 Class EA, that something particular would occur and for
4 whatever reason our decision might not be entirely
5 relevant to that, is it the Ministry of the
6 Environment's view that we could say anything we wanted
7 about bump-up in the absence of having evidence today
8 about what circumstances might give rise to requests in
9 the future?

10 MS. GILLESPIE: Well, we would urge the
11 Board to leave in the discretion of the minister that
12 we have discussed because the reason for bump-up is
13 that it is very difficult to foresee the future and
14 that binding the minister's discretion may have a
15 result that you can't predict either and that its
16 utility as a safeguard relies on its flexibility in the
17 decision on whether to grant the request or not.

18 MADAM CHAIR: One other question. Ms.
19 Seaborn some time ago presented us with the criteria
20 that the EA branch had developed and put in front of us
21 with respect to bump-up. Was the source of the EAAC
22 Report?

23 It was coincident because it came in a
24 package that was a letter from Mrs. Grier to Dr. Bier.

25 MS. GILLESPIE: The EAAC Report was one

1 of the things that led to the development of the
2 guidelines. It was not the only element dealt with in
3 the guidelines.

4 In the minister's referral to EAAC she
5 asked them to suggest what sorts of guidelines and
6 criteria would be appropriate and that guideline is in
7 the MOE source book.

8 MS. SEABORN: I would like to continue,
9 Madam Chair and Mr. Martel, and deal with the last two
10 topics on our outline.

11 Topic No. 10 has two aspects to it. The
12 the first one is MOE's view as to the role of the
13 Timber Management Planning Manual as a result of your
14 approval; and the second matter is the rationale behind
15 MOE's index to environmental assessment components and
16 that matter is condition 48(b).

17 I want to deal with the rationale for
18 MOE's proposed condition in respect to amendments in
19 respect of the Timber Management Planning Manual. This
20 issue is addressed in our written argument at pages 78
21 to 81 and again at page 167 and the term and condition
22 itself is found at page 9 of our terms and conditions.

23 Now, Madam Chair, as you have alluded
24 earlier in one of your questions to us, MOE has paid
25 close attention to the contents and requirements of the

1 Timber Management Planning Manual. The manual is
2 Exhibit 7 of the hearing record. It was filed during
3 the very first panel of evidence that you heard during
4 this hearing. I want to try and explain to you why MOE
5 has focused on that manual.

6 MNR has taken the position that the
7 Timber Management Planning Manual will be amended
8 following your decision to incorporate the terms and
9 conditions of the approval.

10 MR. FREIDIN: The planning process.

11 MS. SEABORN: I will actually be getting
12 to that, Mr. Freidin.

13 As I indicated to you yesterday, what has
14 traditionally happened in the context of a Class EA is
15 that after the minister gives approval the proponent
16 goes away and revises the Class EA and then appended to
17 the Class EA are the terms and conditions of approval.

18 What MNR is proposing in this instance is
19 to take your terms and conditions of approval and to
20 the extent that they apply to the planning process
21 requirements amend the Timber Management Planning
22 Manual and they would amend the manual to reflect the
23 terms and conditions of your approval.

24 Now, one of the things the Board will
25 notice if they look again at the index of the Timber

1 Management Planning Manual and look at the terms and
2 conditions of approval is the number of topics they
3 have in common.

4 There is going to be, if you adopt MNR's
5 conditions and, I would submit, almost of the major
6 parties' conditions or parts thereof, substantial
7 changes required to the Timber Management Planning
8 Manual.

9 The manual in its index addresses plan
10 production and review, all of the steps that are in the
11 conditions in that regard; public consultation; timber
12 management plan requirements, which is substantial;
13 annual reporting requirements; annual work schedule
14 requirements. All of these things are addressed in the
15 manual.

16 So when we talk about amending the manual
17 in respect of the planning process terms and conditions
18 you would not put into that manual what we would call
19 one-time term and conditions and those would be the
20 proposals from MNR to conduct scientific studies,
21 continuing developments; those sorts of conditions
22 which will not be implemented at the management unit
23 level. They won't be a part of the planning manual, is
24 my understanding of how the process will work.

25 Now, what our concern is about this

1 matter is that MNR has proposed a procedure in its
2 condition 75(a) and there is no dispute resolution
3 mechanism in that procedure.

4 I will give you our submission on that
5 and then go back to what our proposal is and why we
6 think it is important.

7 It is our submission that without some
8 dispute resolution procedure MOE's compliance
9 responsibilities and capabilities will be severely
10 undermined if it is constantly caught up in argument
11 between MNR and those affected by timber management
12 activities as to whether the procedures set out in the
13 Timber Management Planning Manual conform to the
14 Board's conditions of approval.

15 What MNR's condition 75 allows for is for
16 an opportunity after a decision is final, and that
17 would be after an appeal period goes by in the sense of
18 the 28 days under the act for an appeal to cabinet,
19 after your decision is final MNR is going to revise the
20 Timber Management Planning Manual in accordance with
21 this condition.

22 Now, before they finalize those
23 amendments, what they propose on doing is providing to
24 MOE and other interested persons, who I would suggest
25 would be the major parties to this hearing and anyone

1 else who participated in this hearing who is
2 interested, with a copy of the draft manual and the
3 revisions and we will all have an opportunity to
4 comment in writing to MNR and MNR will consider the
5 comments and then they will finalize the revisions to
6 the manual and there is a time period within which all
7 of that will occur.

8 Now, it is quite clear from that
9 condition that MNR will have the ultimate say as to
10 whether your terms and conditions of approval in
11 respect of the planning process requirements have been
12 accurately reflected in the planning manual.

13 It is our submission, Madam Chair, that
14 MNR cannot be the arbiter of disputes, nor can it alone
15 determine whether the manual has properly reflected
16 what you and Mr. Martel, Madam Chair, decide.

17 As I indicated earlier in our argument,
18 we have paid close to attention to the manual. In
19 fact, our original draft terms and conditions were
20 structured in such a way that we suggested specific
21 changes to the manual.

22 You will recall in our very set of terms
23 and conditions we referred, for example, to the chapter
24 on public consultation in the Timber Management
25 Planning Manual suggested that the following changes be

1 made to that chapter in respect of public consultation.

2 That approach was dropped by MOE and we
3 agreed that MNR could in the first instance following
4 your approval consider how it wished to best structure
5 the manual to reflect your decision.

6 The problem we have, though, is what if
7 there are disputes. Mr. Campbell raised this issue
8 with Mr. Bisschop during MNR's Panel 15 evidence.
9 There was a discussion between Mr. Campbell and Mr.
10 Bisschop, and I won't read it all into record, at pages
11 26,518 to 26,520 of the transcript.

12 Mr. Campbell asked Mr. Bisschop whether
13 the Minister of the Environment would be required to
14 approve the revisions to the manual. Mr. Bisschop
15 stated that MOE would have the opportunity to review
16 the manual and to satisfy ourselves that the
17 appropriate terms and conditions were incorporated.

18 We raised this matter again during MNR's
19 reply evidence. MNR confirmed that they did not view
20 MOE concurrence with the manual as being a requirement.

21 If you turn to page 79 of our written
22 argument, I would like to draw your attention to the
23 discussion that occurred between Mr. Kennedy and Ms.
24 Gillespie on this matter. On page 79, the question was
25 asked:

1 "Can I take it from what you have said
2 that you regard the provision to the
3 director of the Environmental Assessment
4 Branch as being a requirement that the
5 director of the Environmental Assessment
6 Branch concur with the revisions?

7 "A. No, I would not go so far as to
8 use the word concurrence in this
9 particular term and condition."

10 However, in continuing the answer Mr.
11 Kennedy went on to say:

12 "I think it is important that MNR
13 maintain the responsibility to put in
14 place the Timber Management Planning
15 Manual. I think it is important that the
16 Ministry of the Environment maintain some
17 distance, if you will, from that final
18 decision as in keeping with the EA
19 process, and that MNR has responsibility
20 to do their best to ensure that we have
21 properly incorporated the results of the
22 Board's final terms and conditions into a
23 manual that will serve as the primary
24 tool for providing direction to the field
25 in implementing terms and conditions

1 related to timber management planning and
2 plan contents."

3 We agree that MNR has the responsibility
4 to implement the conditions of approval. That's not
5 the issue.

6 At the same time, MNR has said in the
7 words of Mr. Kennedy that MOE and the director of the
8 EA branch has the responsibility to serve the purpose
9 of safeguarding the public interest.

10 It is our submission that if MOE does not
11 have an approval function it can hardly play the role
12 of safeguarding the public interest.

13 The only reasonable course of action that
14 we could come up with is to ask the Board to retain
15 jurisdiction over the final approval of the Timber
16 Management Planning Manual.

17 The matter of the Board retaining
18 jurisdiction was also addressed during MNR's Panel 15
19 evidence. At that time, and I will refer you to page
20 26,520 of the transcript, Mr. Freidin indicated that:

21 "This is not something which is
22 unheard of in other proceedings. I don't
23 think that it would be something that
24 would be unusual in these, although, as I
25 say, there is nothing specifically in

1 here on that matter."

2 Mr. Freidin went on to to say at the
3 bottom of page 26,521:

4 "Well, I think we can just leave that
5 particular problem with the Ministry and
6 with me and we will hope to address that
7 particular matter in light of the
8 comments which have been made. Thank
9 you."

10 Now, MNR has clearly not embraced a
11 proposal that the director of the EA branch have any
12 sort of approval function over the final version of the
13 Timber Management Planning Manual.

14 MNR has not embraced our condition 75(b).
15 In our condition 75(b) I want to explain to the Board
16 precisely what we are suggesting. This condition has
17 been characterized by other parties in a variety of
18 different ways. People have made assumptions about
19 what it means and we have tried, you will see in the
20 highlighted version, to give even more detail this time
21 to give assurances to the Board and the other parties
22 that we are not proposing something that will be an
23 onerous task for the panel.

24 After MNR and all of us have had a kick
25 at the Timber Management Planning Manual, it has gone

1 through the process in term and condition 75, it has
2 gone through that process, in the event -- so the
3 process in 75 would be where everyone has a chance to
4 review it and then MNR finalizes it.

5 So it will go through that process and
6 then after that what happens if either MOE and MNR, FFT
7 and MNR, FFT and the Industry, the Industry and MNR,
8 any combination - I am thinking of the major parties
9 here to be practical, those will probably be the
10 parties that will review this - we try and settle the
11 terms of the manual and we come to a roadblock?

12 We are at the situation where MOE is
13 saying: I am convinced that what Mr. Martel and Mrs.
14 Koven's intention was with this condition was that it
15 is thus and so and it should be reflected this way in
16 the manual. The other parties have a different
17 interpretation.

18 What we are suggesting is that you act as
19 the arbiters. We are suggesting that after the manual
20 is finalized by MNR it will go out to everyone, after
21 we have gone through all of this discussion and
22 negotiation MNR says: This is the best we can do, this
23 is what we think is right, they send it out to
24 everyone, we have said in 75(b) in the second line that
25 parties will have one month within which to make

1 submissions to you in the event - only in the event -
2 clarification is required regarding the Board's
3 decision as reflected by MNR in the revised Timber
4 Management Planning Manual.

5 That is the issue upon which parties will
6 be seeking clarification - only the planning process
7 terms and conditions in the context of the Timber
8 Management Planning Manual.

9 We have suggested that if anyone has a
10 submission to make to you it would be in writing and
11 even more specific than that, so there is not a
12 discussion in the air, a party who has a problem with
13 MNR's manual will set out for the Board a specific
14 amendment they are requesting to MNR's Timber
15 Management Planning Manual, presumably with the
16 rationale saying why it is they feel that MNR's section
17 in the manual doesn't reflect that condition.

18 There would be no new evidence to be
19 considered by the Board in deciding any dispute and the
20 Board's consideration would be strictly limited to
21 issue as to whether the terms and conditions of
22 approval are fairly reflected in the Timber Management
23 Planning Manual.

24 So what we are asking for, Madam Chair,
25 is a very narrow process. Why are we asking for this?

1 Why is this so important?

2 Mr. Freidin suggested in his submissions
3 that the Board must be clear in its reasons for
4 decision. It is our submission that that matter --
5 this is the point.

6 We have complete confidence in the Board
7 to write a clear decision. That has never been the
8 issue from MOE's perspective and was not in any way,
9 shape or form the impetus behind our proposal.

10 As the Board is no doubt painfully aware,
11 lawyers are capable of debating the most
12 straightforward propositions. What MOE is absolutely
13 sure of is that they are going to be disagreements
14 among these parties as to what you, Madam Chair and Mr.
15 Martel, meant by a particular statement in your reasons
16 and where those differences cannot be resolved there
17 has to be a mechanism to settle these matters.

18 I will give you a perfect example. I
19 spent some time yesterday, and I wouldn't have
20 anticipated two years ago that I would have had to, I
21 spent some time yesterday suggesting to the Board that
22 it didn't need to revisit matters that it had already
23 ruled upon. Yet there has been an incredible amount of
24 effort in argument spent on debating your previous
25 rulings. You have been asked to consider what I

1 suspect in your own minds was perfectly clear.

2 MOE, after this approval is in place, is
3 going to be faced with controversy in the sense of --
4 sorry, let me step back. If there is not a final
5 sign-off on a document, whether it be a revised Class
6 EA or whether it be the Timber Management Planning
7 Manual, MOE is going to be caught up in a debate for
8 years to come as to whether or not your approval has
9 been accurately reflected by MNR.

10 We would like that matter settled so that
11 whenever there is a bump-up request or other issues
12 come up we do not have to go back into a debate of what
13 did you mean in your reasons for decision.

14 As I indicated to you, MNR has not
15 embraced the proposal that the director of the EA
16 branch sign-off and concur with the contents of the
17 Timber Management Planning Manual and they are
18 reluctant to support our proposal on you retaining your
19 jurisdiction to deal with that narrow issue after the
20 decision becomes final.

21 It is our submission, however, that MNR
22 cannot be the arbiter on this matter. 75(b) isn't
23 perfect, but in our suggestion it is the best proposal
24 that we could come up with in the absence of any
25 proposals from anyone else on how to deal with this

1 matter.

2 MR. FREIDIN: Ms. Seaborn, in your
3 submissions you indicated that there may be
4 disagreement of certain parties regarding statements in
5 the Board's reasons for decision.

6 I understand that your proposal is that
7 we come back and debate whether in fact the term or
8 condition has been accurately reflected in the timber
9 management planning revisions. I think there is a
10 difference between asking the Board to look at that and
11 asking the Board to interpret its reasons for decisions
12 and disagreements.

13 I am wondering what...

14 MADAM CHAIR: Mr. Freidin, you are giving
15 Ms. Seaborn a perfect example of the kind of
16 conversation that will be taking place after the Board
17 makes its decision.

18 MR. FREIDIN: I am just asking for
19 clarification so we don't have to have that, we will
20 know what we are debating. Whether it is your reasons
21 for decisions or your terms and conditions.

22 I think that is a pretty basic thing to
23 get straight.

24 MS. SEABORN: What we have said, Mr.
25 Freidin -- the procedure we have set out is in the term

1 and condition.

2 What I have said was that what will lead
3 to the conflict over how you have reflected the matter
4 in the Timber Management Planning Manual will no doubt
5 be the Board's reasons for decision.

6 That is different. That is a different
7 matter. What we have said in our procedure is that if
8 someone isn't happy with what you have done they can
9 have the opportunity to propose to the Board amended
10 wording. The Board will be the arbiter of what they
11 meant in their reasons for decision. There will be no
12 submissions, there will be no new evidence.

13 Someone referred to this as the reunion
14 clause. There will be no reunion other than by
15 correspondence, I can assure you, unless the Board
16 decided that that was necessary.

17 MADAM CHAIR: I think we have a few
18 questions for you, Ms. Seaborn.

19 Well, I suppose if Mr. Martel and I
20 aren't dead and you can still find us in the phonebook
21 somewhere there is a possibility something could be
22 done.

23 With respect to how we do this at the
24 Board it is not quite as clear. As you know, there
25 have been clarifications of decisions, particularly by

1 the director of approvals, who doesn't know what a
2 panel have said, they don't understand the terms and
3 conditions of a decision, and those things have been
4 clarified often in writing and they are fairly simple
5 and straightforward.

6 We have had a situation such as the North
7 Simcoe case where they have really tried hard to
8 reconstitute that board and, as you know, a member of
9 the Joint Board, one resigned and she is not coming
10 back, and I don't know what will happen with that.

11 So there are practical considerations
12 about how you get a board together and with an
13 optimistic, you know, schedule of a year it doesn't
14 seem to be a problem, but we know with this hearing we
15 cannot really rely on schedules. It might be four
16 years from now before you get all of this taken care
17 of.

18 The other question is, I don't know how
19 you give a Board sort of a jurisdiction in limbo until
20 something happens that you want it to look at.

21 It seems to me you are going to have to
22 sort that out. The Minister of the Environment is
23 going to have to sort out what you do about
24 jurisdiction because we could say: All right, sure, do
25 whatever it is that has to be done legally to keep us

1 seized of this matter until this final thing can be
2 taken care of and Mr. Freidin might jump up and say:
3 No, we are not going to do it. This is absolutely
4 something you can't do and there would be sort of legal
5 challenges to our jurisdiction and we don't want to
6 consider adding anymore to the complications of this
7 process.

8 MS. SEABORN: I think the difficulty is
9 that unlike the Consolidated Hearings Act there is a
10 specific provision in that legislation that allows the
11 joint board to do those sorts of things. You don't
12 have that here.

13 So the only way that we could see for you
14 to retain your jurisdiction over this narrow matter
15 would be through a term and condition. I think that is
16 the way that you would have to do it.

17 I think the other point I would like to
18 make, Madam Chair, in response to that question is
19 that, as you are aware, under the legislation is that
20 once your decision comes out there is a 28-day appeal
21 period and then your decision becomes final.

22 This condition we have always viewed as
23 an implementation condition. It does not -- and this
24 was suggested by someone in their argument. I can't
25 recall whether it was Mr. Freidin or someone else. The

1 suggestion was made that the appeal period and your
2 final decision would somehow be delayed by a year based
3 on this proposal.

4 It is our submission that that wouldn't
5 happen. What would happen is that when your decision
6 comes out, by law there is a 28-day appeal period.
7 Whatever will happen, if there are appeals that will
8 happen, you will go through process.

9 Once MNR knows what the approval looks
10 like in the event there was an appeal, their first step
11 under the terms and conditions would be to amend the
12 Timber Management Planning Manual.

13 So it is after that process is in place
14 that we are asking you to retain this narrow
15 jurisdiction. As I said, it is only in respect of the
16 planning process conditions as well to the extent that
17 you attach those sorts of conditions to your approval.

18 Excuse me for one moment, Madam Chair.

19 Madam Chair, I want to address the second
20 matter under this topic which is MOE's proposal in
21 respect of an index to the environmental assessment
22 components of the plan. This is found in our condition
23 48(b) at page 9 of our terms and conditions.

24 What we are proposing is that MNR provide
25 an index to the environmental assessment components of

1 a timber management plan.

2 Ms. Dahl gave you evidence in respect of
3 our proposal during her testimony. In her evidence,
4 Ms. Dahl indicated that it was MOE's position that a
5 condition was not necessary, but we have reconsidered
6 our position on this matter which is why you see
7 condition 48(b) being highlighted in yellow.

8 All this condition is intended to do,
9 Madam Chair, is to ensure that the EA components of a
10 timber management plan can be separated if necessary
11 from all the other elements of the plan.

12 We are not requiring a separate plan, we
13 are not requiring the timber management plan, say, if
14 you had three volumes of a plan, under the new system
15 we are not requiring someone to take chapters from each
16 of those volumes and put it together and say this is
17 the EA part of it. All we are asking for is a one, two
18 page, however long it takes, index to the environmental
19 assessment components.

20 So in the conditions, what we have done
21 in 48(b) is just list in items 1 to 7 what would be the
22 items that you would put in the index. So background
23 information you would say, assuming you were doing a
24 standard table of contents on the right-hand side of
25 the page, which parts of plan you can find background

1 information in. It would say where is the description
2 of the environment affected, it will give you the area
3 of the plan where that information was.

4 So that's the sort of documentation that
5 we are asking that MNR produce. We think this will be
6 beneficial to those who are interested in reviewing a
7 timber management plan from an environmental assessment
8 perspective. It will certainly be useful to the EA
9 branch and to MOE in reviewing a plan in the context of
10 environmental assessment requirements and it will most
11 certainly be useful in the event that there are bump-up
12 requests following the approval in respect of
13 individual plans.

14 If you don't have any questions on that
15 proposal, Madam Chair, I will just move to my last
16 area.

17 In terms of the approval, you will
18 appreciate that MNR is now asking for a nine-year
19 approval. MOE addresses this matter in pages 157 to
20 158 of our written argument and MOE is in support of a
21 nine-year approval in respect of this undertaking.

22 I would like you, though, in considering
23 the nine-year approval to consider a number of
24 submissions I made in respect of MOE's terms and
25 conditions on the need to report on certain matters

1 during the term of the approval and particularly the
2 submissions I made to you on reporting for
3 silvicultural effectiveness and some of the other
4 proposals that we suggested were interim until MNR
5 takes another step.

6 We believe that our conditions in this
7 area are even more necessary than they were before in
8 the context of a nine-year approval because the matter
9 will not come up for review for some period of time.

10 To put it simply, we may not be so
11 concerned about requiring MNR to do things in the
12 interim if the minister was going to be receiving
13 information on the state of the Class EA in the context
14 of a review of the Class EA and have an opportunity to
15 decide whether to grant an extension or not five years
16 from now.

17 Madam Chair, the one remaining item that
18 I wanted to address is this issue of the costs of MNR
19 terms and conditions. At page 837 of MNR's written
20 argument they have a Table 1 estimate summary.

21 MADAM CHAIR: What is the reference for
22 that, Ms. Seaborn?

23 MS. SEABORN: The MNR final argument,
24 Volume II and it is at page 837.

25 I don't think MOE or anyone at this

1 hearing could dispute the fact that timber management
2 and resource management planning generally cost money.

3 I wanted to make it clear, though, so it
4 isn't interpreted by anyone in this way that the costs
5 that are on Table 1 are all associated with draft terms
6 and conditions. These are not the costs of the
7 environmental assessment.

8 As I had pointed out to you, the terms
9 and conditions cover almost every aspect of MNR timber
10 management planning. Without this expenditure and
11 without this reference to the terms and conditions I
12 would suggest that you would not be conducting timber
13 management at all.

14 It is not a question of spending so many
15 millions of dollars on timber management and then the
16 EA is imposing all these additional costs. These are
17 things that are listed in these draft terms and
18 conditions that MNR is doing now. The only point I
19 would like to make is that these are not all new items.

20 Madam Chair and Mr. Martel, you will
21 appreciate that we have spent some time in argument
22 over the past two days addressing the requirements of
23 the Environmental Assessment Act.

24 We structured our written argument,
25 particularly Part 1, the undertaking, to address

1 Sections 12, 14 and, in particular, Section 5(3) of the
2 act.

3 We spent some time reviewing with you
4 your rulings and why we believe you should rely on
5 those rulings.

6 We have provided to you in Part 4 of our
7 argument our response to the questions you posed in
8 July 1992 and we hope those responses will be of
9 assistance to you.

10 When we turned our mind to how to
11 approach argument we wanted to ensure that the items we
12 covered for you would provide you with MOE's view as to
13 the basic elements of the act we believe you should
14 address in your decision.

15 On behalf of the MOE hearing team, Ms.
16 Dahl, Mr. Neary, Mr. Bax and in particular Mr.
17 Sutterfield, who has been here since the preliminary
18 hearings commenced in January 1988, Ms. Gillespie, Mr.
19 Campbell and I would like to thank the Board for the
20 opportunity to appear before you and for your interest
21 in and consideration of the positions taken by MOE
22 throughout.

23 We hope our participation has been
24 helpful to you and we look forward to your decision.

25 Thank you.

1 MADAM CHAIR: Thank you very much, Ms.

2 Seaborn and Ms. Gillespie, and everyone else who has
3 been involved in putting your case before us.

4 We thank you for all your hard work and
5 thank you very much.

6 ---Whereupon the hearing was adjourned at 2:30 p.m., to
7 be reconvened on Wednesday, November 11th commencing
8 at 9:00 a.m.



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